
(1942) 07 MAD CK 0008
In the Madras High Court

Khan Sahib K. Kunhammed Koya

APPELLANT

Vs

Mullasserri Gopala Menon and Another

RESPONDENT

Date of Decision : 08-07-1942

Acts Referred:

Citation : (1942) 55 LW 824 : (1942) 2 MLJ 744

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—This Second Appeal arises out of O.P. No. 99 of 1937 which was filed in the District Munsiff's Court of Calicut under

Sections 22 and 23 of the Malabar Tenancy Act. The first respondent in this appeal filed the petition asking that a renewal of a prior demise may

be directed. The lands belong in jenmam to the Patinhare Kovilakam and were demised on kanom tenure to the first respondent by a registered

deed, dated the 8th August, 1923. The term of that kanom expired on 8th August, 1935. The appellant obtained a melcharth from the second

respondent on the 23rd March, 1937 and called upon the first respondent to deliver possession of the properties on receipt of the kanom amount

and the value of the improvements. The demand not having been complied with, O.S. No. 482 of 1937 was filed by the appellant seeking to

recover the suit properties from the first respondent. In order to non-suit the plaintiff, O.P. No. 99 of 1937 was filed asking for a compulsory

renewal under the provisions of the Malabar Tenancy Act. Both " the lower Courts allowed the petition on certain terms. This appeal is filed

attacking the decision of the Courts below that the first respondent is entitled to a renewal under the Act.

2. Exhibit A is the document under which the first respondent got the property on demise from the second respondent Kovilakam. Ex. I is the corresponding kaichit or counter-part.

3. The relevant sections of the Act which have a bearing on this question are Sections 23 and 17. Section 17 says that a kanomdar shall, on the expiry of the kanom under which he holds, be entitled to claim and his immediate landlord shall be bound to grant a renewal on certain terms.

Clause (c), Sub-clause (2) of the section provides that nothing in the section shall apply to a kanom where all the lands covered by the kanom are

dry lands. The point taken in this case is that all the lands comprised in Exs. A and I are dry lands and that, therefore, no renewal can be ordered.

Section 3 (d) defines the expression dry land as meaning "'a land which is neither a wet land nor a garden land'". Wet land is defined in Section 3,

Clause (x) as land which is adapted for the cultivation of paddy. It is admitted in this case that none of the lands comes under the definition of wet

land. The expression "'garden land'" is defined in Clause (g) of Section 3 as meaning "'any land used principally for growing fruit-bearing trees'". It is

contended that some of the lands covered by Exs. A and I are garden lands within the meaning of Section 3 (g) and that is the only point which

arises for consideration.

4. The lower appellate Court relied upon earlier documents of 1899 (Ex. F-10) and 1889 (Ex. F-3) to show that some of the lands are garden

lands. It is said that those documents disclose that on the dates of those documents the lands were garden lands and the argument is that the land

has not ceased to be a garden land. In my opinion these documents are entirely irrelevant and ought not to have been looked into. We are not

concerned with the question as to what use the properties were put to in 1889 and 1899. The only question is whether in 1923, the date of Exs. A

and I, the properties or any of them were garden lands. Nearly 25 years had elapsed from the date of Ex. F-10 and nearly 35 years from the date

of Ex. F-3. The Court is not entitled to draw any inference from the state of things that existed a quarter of century and more prior to the date of

the suit demise. It is this consideration that has vitiated the judgment of the lower appellate Court and I have to consider whether, apart from Exs.

F-3 and F-10, there is sufficient evidence to show that any of the lands was a

garden land as defined by Section 3 (g) on the dates of Exs. A and I.

5. Turning to Ex. A itself we find as many as six items covered by the document. The schedule attached to Ex. A gives the description of the

various items. There is also a sketch showing the location of the various plots. Plot 1 is described to be a paramba on which a five-chambered

shop building stands. It is about 57 ft. by 18 ft. The second is a plot 10 1/2 ft. by 12 ft. and is described to consist of one-chambered shop. I shall

deal with item 3 later. Item 4 is described as an one-chambered shop measuring 9 ft. by 9 ft. Item 5 is described as the one-chambered shop

building 12 ft. by 9 ft. and item 6 is a shop site consisting of two plots one 13 1/2 ft. by 15 ft. and the other 6 ft. by 4 1/2 ft. It is not contended that

any of these items comes within the definition of garden land. It is only as regards item 3 that there is the dispute. Item 3 is described thus:

The poovanthazhum paramba attached to the above decree thirteen by fourteen and three-fourths. Comprised in Survey No. 292 (10) the

description in the A register is as poovanthazhum paramba, etc.,

and is said to measure 78 ft. by 88 1/2 ft. A Commissioner was appointed to make a local inspection and to report upon the physical features of

the various plots. His plan is Ex. G and his report is Ex. G-I. With respect to all the plots except item 3 his report shows that they cannot possibly

be termed garden lands. As regards item 3 he has noted that it is an irregular shaped plot. \ In Ex. G, the plan submitted by him, he marked the

various portions of this plot with the letters G, H, K,L, M, N, O, P, Q, R. There is a well in the plot marked H. As noted by him plot H is a house

let to a tenant Pappammal. It is a fairly big house as is seen from the plan with a frontage on the eastern and western sides. G is described as an

irregular plot cemented over and raised up one foot from the ground and used for drying things. One portion of N in the west is described to be a

yard into which the front door of house H opens. Plot K is described to be a cemented yard in the eastern front of the house. M is said to be a

vacant space to the east of the plot K. The Commissioner says that between K and M there is a stone bund marked in the plan nearly a foot higher

than K. A door from Rule 8. No. 292 Chandukunhan's shop opens into this space M. In M stands one cocoanut tree numbered 3 and aged 45

years. L is said to be a thatched shed used as a shop, J a tiny thara or a raised

platform or basement occupying a very little space. Plot N is the irregular space as is seen from the sketch and is said to contain six cocoanut trees all fifty years old. R again is the house of Pappammal. P is a cow-shed. O is a fuel shed. Q is a latrine. Then come the following remarks: ""The measurements of all the buildings and the sheds as given in the plan are in feet and the scale is 6 ft. for one inch. The suit items and plots are marked in colours for easy reference. Surrounding the fuel shed and latrine, are about 21 plantain trees in that portion of the plot N marked in the plan by stars.... Seven cocoa-nut trees and one murunga tree and 21 plantain trees stand in suit property item No. III."" The last paragraph is a summary of what has gone before. Altogether therefore there were seven cocoanut trees of which six are stated to be 50 years old and one 45 years old. One cocoanut tree is in plot M and six are in plot N. A few plantain trees are in the south-western corner of this plot. On these materials I consider it impossible ,to sustain the conclusion of the lower Court that the plot 3 as a whole satisfies the terms of Section 3 (g). It will be noted that Section 3 (g) requires that the land should be used principally for growing fruit-bearing trees. It is clear that so far as the cocoanut trees are concerned they were all planted more than 45 years ago and having regard to the large area of plot 3, the number of the trees is negligible. No cocoanut trees have been planted during the last 45 years. The plantain trees are 21 in number. In a plot which is principally used as a residential house, there are always a few plantain trees and a few cocoanut trees and it will be preposterous to say that the whole plot including the building is used principally for growing fruit-bearing trees. If it is the principal user that is to be regarded, the plot as a whole is principally used for residential purposes. The twenty-one plantain trees, the seven cocoanut trees and the one murunga tree are there for the better convenience of the residential house. It is common experience even in Madras where there is not plenty of water as on the west coast to find in residential houses with compounds, a few plantain trees, a. few cocoanut trees and some murunga trees. It will be a misuse of the language to say that the plot as a whole is used principally for growing fruit-bearing trees. In the west coast where there is plenty of water and scarcely any house without a compound, there Will always be a few trees of this description and if the view urged by

the respondent is accepted, every house and every residential building in which there are a few cocoanut trees or a few plantain trees must be held

to be lands principally used for growing fruit-bearing trees and therefore garden lands. I think such a conclusion is impossible. The Courts below

were led away by what"" I have held to be an irrelevant consideration, viz., that in 1889 or 1899 a portion of these lands was let out to the then

tenant under terms which, in the opinion of the Courts below, show that it was then a garden land. It is not clear how the state of things at that time

would enable one to say that it was even then a garden land. Even in 1899 there were, in addition to the buildings, twelve cocoanut trees, three

areca, one jack and one paraka tree. It would be very difficult to say with that state of things, the land could properly be termed garden land even

in 1899.

6. But as I said that is entirely irrelevant for considering whether in 1923 when the land was demised under Ex. A it was a garden land, i.e.,

whether it was used principally for growing fruit-bearing trees. The principal user of the land as a whole is the test. I reverse the decrees of the

lower Courts and dismiss O.P. No. 99 of 1937 with costs throughout. The result will be that O.S. No. 482 of 1937 will stand revived and it

should be tried on the other questions that arise in the case and appropriate reliefs passed after taking evidence.

No leave.