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**(1919) 12 MAD CK 0017**  
**In the Madras High Court**

Kolangereth Raman Nair and Others

APPELLANT

Vs

Kolimatamullathil Mariyomma and Others

RESPONDENT

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**Date of Decision :** 11-12-1919

**Acts Referred:**

**Citation :** 56 Ind. Cas. 13

**Hon'ble Judges :** Seshagiri Aiyar, J;Oldfield, J

**Bench :** Division Bench

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## **Judgement**

1. The first question in this case is whether there is a denial of title and if so, does the denial cover all the items in the suit or only some. The 2nd

question is, supposing there is a denial, whether, having regard to the nature of the tenure, no. forfeiture is incurred. On the first question the

Subordinate Judge had made some obvious mistakes which have confused the issue. He is clearly wrong in saying that the denials in Exhibits IF,

III, and IV are only repetitions of the denial in Exhibit D. Exhibit D relates to item I. Exhibits II, III and IV relate to items 2 and 3, and the nature of

the denials in these two sets of documents is altogether different. Exhibit D will be considered later on. As regards the other documents we may

first deal with Exhibit II, as observations with regard to one of them would apply to the others as well. Exhibit II is a sub lease executed to the

defendants. In that, the sub lessee uses the expression with reference to the property demised ""belonging to you the Jenmi"" In another place the

language used is ""without the Jenmi's permission."" Mr. Menon argued that as the defendant accepted these documents without raising objection to

the language employed, he must be deemed to have tacitly assumed the role of a Jenmi and to have denied the title of the plaintiff. This seems to be

a very far-fetched suggestion. It is well-understood in this Presidency that the denial must be brought home to the knowledge of the landlord and it

must be unequivocal and clear. In *Kizhekkekath Komalukutti v. Puthiakath Muhamad* 45 Ind. Cas. 743 : (1918) M.W.N. 200 : 41 M.P 629 : 34

M.L.J. 170 : 23 M.L.T. 178 : 7 L.W. 291 and in *Rama Iyengar v. Anga Guruswami Chetti* 46 Ind. Cas. 62 : 8 L.W. 108 : 35 M.L.J. 129 this

principle was distinctly stated. See also the decision in *Venkatachariar v. Narasimha Ayyangar* 48 Ind. Cas. 301 : (1918) M.W.N. 846 : 35

M.L.J. 647 : 24 M.L.T. 469 : 9 L.W. 164 Here the defendant did no act which can be said to amount to a denial of the title of his landlord. It has

not been pointed out to us that the landlord was made aware of any denial of title by the defendant. Under these circumstances the receipt and

retention of a document by the defendant in which he is spoken of as the Jenmi would not operate as a denial of the plaintiff's title. Therefore, so

far as items 2 and 3 are concerned, the decision of the lower Appellate Court should be confirmed though not for the reasons given by it.

2. The case-as regards item 1 is different. The alleged denial is contained in Exhibit D. That was a claim petition presented in the year 1876 by the

defendants' predecessor-in title. The occasion for this claim was an attempted sale of the property in execution of a decree against the plaintiffs"

predecessor-in-title. In the claim it was stated that the property should not be sold as the "" Jenm right of the Devaswom on this Paramba is barred

by limitation."" This is in effect denying the title of the Jenmi to the property. In *Foa on Landlord and Tenant* it is stated that the setting up of a

prescriptive title would amount to a denial of the landlord's title. The decision in *Neall v. Beadle* (1913) 107 L.T. 646 : 57 S.J. 77 is referred to.

Although that judgment is not quite explicic on the point, it stands to reason that where a tenant impeaches the title of the landlord on the ground

that there is no subsisting title as the property vested in him by virtue of adverse possession, such an attitude should be regarded as amounting to a

denial of title.

3. Now comes the important question, whether having regard to the nature of the estate in the possession of the defendants such a denial would

entail forfeiture. It is now well established in this Presidency, following the Privy Council ruling in *Abhiram Goswami v. Shyama Charan Nandi* 4

Ind. Cas 449 : 36 C.P 1003 : 10 C.L.J. 284 : 6 A.L.J. 8 : 1 Bom.L.R. 1234 : 19 M.L.J. 530 : 14 C.W.N. 1 : 36 I.A. 148 that a perpetual lease

can be forfeited by the tenant denying the title of the landlord. In the present case the defendants claim that they have been in possession of the

property for a very long time and that they have made improvements upon the property. The plaintiffs' allegation is that the properties in suit belong

to the Devaswom of which the plaintiffs are Uralans and that they were leased to the Tarwad of the defendants on Kudima Jenmam. As to when it

was so leased and whether it was within the memory of man, does not appear. The findings of the Court below, which may be accepted, are that

the property belonged originally to the plaintiffs' Devaswom and that the 1st defendant's predecessors must have come into possession at some

time under the Devaswom The contention of the respondents is that a Kudima or Adima right is not resumable under any circumstances. There are

no considered decisions upon the point. In Thikkillath Tarawad v. Manchu Nair the 27 Ind. Cas. 863 : 2 L.W. 102 it was held that an assertion of

Jenmam right by the Kudima will not work a forfeiture so as to enable the landlord to eject him. The decision cited by the learned Judges is not

applicable to the present case. On the other band in Second Appeal No. 1413 of 1908 Benson and Krishna-swami Aiyar, JJ., confirmed a

judgment of Mr. Phillips as District Judge, in which he held that an Adima right can be forfeited by denial of title. The judgment of the High Court

simply says: ""We think it is a perpetual lease. The second appeal is dismissed with costs."" In Second Appeal No. 987 of 19 4 Benson and Wallis,

JJ., upheld the decision of Mr. Venkatramana Pai, the District Judge, who refused to disturb the Kudima tenant from his holding although there has

been a denial of title. In the judgment of the High Court there was no discussion of the question.

4. A consideration of the nature of the tenure suggests that this case cannot be disposed of without further enquiry. In Graem's Glossary an Adima

Grant is described thus:

The Adima Grant of a Paramba or garden was also often conferred by a superior lord, or Tala Udaya Tamburan, upon his own Adiyar or vassal;

but here it was in the nature of an Inam or gift, no consideration having been received for it by the proprietor. An annual trifling tribute of superiority

is, however, reserved to the proprietor to prevent the garden being entirely alienated. The garden reverts to the proprietor on failure of heirs on the part of the Adiyar, and if the Adiyar takes part with the enemies of his patron, the latter may resume the property. Under any other circumstances the Adiyar cannot be dispossessed, and he has the right of burial within the garden.

5. "In this (describing a Kudima grant) the land is made over in perpetuity to the grantee, either unconditionally as a mark of favour, or on condition of certain services being performed. The terms Adima and Kudima mean a slave, or one subject to the landlord, the grant being generally made to such persons. A nominal fee of about two fanams a year is payable to the landlord to show that he still retains the proprietary title. Land bestowed as a mark of favour can never be resumed; but where it is granted as remuneration for certain services, to be performed, the non-performance of such service?, involving the necessity of having them discharged by others, will give the landlord power to recover the land. The non payment of the annual fee will form no ground for ousting the grantee, but it will be recoverable by action. The hereditary property of Native Princes cannot be conferred on this tenure, the Ruling Prince having only the right of enjoyment during life without power to alienate "" (Proceedings of the Court of the Sadar Adalat No. 18 dated 5th August 1856).

6. Logan in his Malabar Law accepts the above description. In the report submitted by the Malabar Land Tenures Commission the above quotation is accepted as correctly defining the Kudima and Adima Tenures. The question in this case is whether the grant was made for past services or for future services. If the former, apparently the tenure cannot be resumed. If the latter, there can be no question that for failure to perform the services the lands can be resumed. It may be taken that the denial of title is tantamount to a denial to render services. Therefore, before finally deciding the case, it is necessary to call for a finding whether the Devaswom granted the lands in question to the defendants" Tarwad for past services or for future services.

7. A further question must also be considered by the lower Court. Exhibit D is dated 1876. Since its date it was suggested the Devaswom has received the pre-scribed rent and has, therefore, waived its right to enforce the

forfeiture. There is no finding whether the Devsawom was aware of its right to eject the defendants" Tarwad on account of forfeiture for denial of title. The difficult question whether the landlord is entitled to enforce the forfeiture after a considerable period of time, even though he was aware of it and acquiesced in the tenant holding on as if there had been no forfeiture, need not be discussed at this stage. The lower Appellate Court must be asked to return findings on these questions on fresh evidence, if any, tendered within 3 (three) months from this date. Seven days are allowed for objections.

8. In obedience to the order contained in the above judgment, the Temporary Subordinate Judge of Tellicherry submitted the following

9. FINDINGS.--I have been ordered to submit findings on the following three issues:

1. Whether the Devaswom granted the lands in question to the defendants" Tarwad for past services or for future services?

2. Whether the Devaswom has received the prescribed rent and has thereby waived its right to enforce the forfeiture?

3. Whether the Davaswom was aware of its right to eject the defendants" Tarwad on account of forfeiture for denial of title?

2. Issue No, 1.--After remand plaintiffs have examined two witnesses. Defendants have adduced no new evidence. The Tarwad of defendants

Nos. 1 to 4, called Kolimata Mulathil, appears to be an ancient, rich and influential Mopla Tarwad in the locality. Kunkan Nayar, examined by the

plaintiffs, states, "" The Tarwad of defendants Nos. 1 to 4 is an ancient one. I have seen it to be a rich and influential Tarwad."" This Kunkan Nayar,

who is aged 54, states that he knows this Davaswom for the last 50 years. The other witness examined by the plaintiffs Kannan Nambiar, who is

aged 55, states that he knows this Devaswom for the last 30 years. These two witnesses do not know under what circumstances the Kudima grant

now in question was granted. No one is now able to say as to when it was granted. If the allegation in Exhibit D is true, it is one granted more than

90 years ago. Plaintiffs" case now appears to be that it is one granted neither for past services nor for future services. It is not alleged by the

defendants that they have undertaken to perform any service or that they are performing any. The two witnesses examined by the plaintiffs state

that Moplas are not allowed to make any offering to the temple or to perform themselves or through any one else any service in the temple. It is clear under the circumstances that the grant in question is one made not for future services. As to whether it is one granted for past services, there is no evidence. My finding, therefore, on this issue is that the grant in question is not one made for future services and that there is no evidence to show that it is one made for past services.

8. Issues Nos. 2 and 3.--No new evidence has been adduced regarding the point involved in these issues. The suit was instituted on 10th July

1913. In paragraph 8 of the plaint the cause of action is alleged to have arisen on and after January 1913. There is admission in paragraph 3 of the

plaint that Porapad was paid till 1079, 1903-04. Narayanan Nambiar (P. W. No. 1), Kariasthan of the plaint Devaswom, states, "" It was in 1913

or 1912 that 2nd plaintiff told me that the Tarwad of defendants Nos. 1 to 4 was keeping Porapad in arrears and claiming, Jenm right in respect of

the plaint items."" Second plaintiff has not been examined. Again he state?, "Before I got Exhibit D, the Devaswom was not aware of the claim

made by the Tarwad of defendants Nos. 1 to 4. I got Exhibit D only two days before filing is in Court."" The evidence on record shows that the

Devaswam has not collected Porapad after knowing the denial of title, The claim evidenced by Exhibit D was made when property was attached

for decree obtained against the Devaswom, There is no evidence to prove that the Devaswom had notice of this claim. The District Mansif

considers this question in paragraph 14 of his judgment. There is no evidence on record to show that the Devaswam became aware of this claim

about the time it was filed in Court. For waiver there should be knowledge of the denial of title. There is no evidence to prove such knowledge. I,

therefore, find issue No. 2 in the negative and on issue No. 3, I find that the Devasworn became aware of its right to eject on account of forfeiture

of the denial of title only in 1912.

10. This second appeal coming on for final hearing after the return of the findings of the lower Appellate Court upon the issues referred by this

Court for trial, the Court delivered the following.

11. We accept the finding and dismiss the second appeal with costs. (One set).