

(1922) 12 MAD CK 0008
In the Madras High Court

Kozhikot Patinhare Kovilagath Thambatti Thamburathi alias
Viyathen Notti alias Valiza Thamburathi Avergal, Manager of
the Kovilagam (Deceased) and Others

APPELLANT

Vs

Kattayahat Vatakara Theizhath Taravathil Karnavan Sankara
Menon and Others

RESPONDENT

Date of Decision : 13-12-1922

Acts Referred:

Contract Act, 1872 — Section 196, 200

Citation : 73 Ind. Cas. 376

Hon'ble Judges : Ramesam, J; Oldfield, J

Bench : Division Bench

Judgement

1. The facts, so far as they are necessary for the arguments which we propose to consider, are that the second plaintiff, here one of the appellants,

is s melcharthar under a meleharth given by the first plaintiff, the senior lady of a Kovilagam. Third plaintiff was the senior male member of the

Kovilagam. Many years back, the first plaintiff's predecessor had been removed from management under Exhibit XI. Subsequently, the first

plaintiff, as she contends, was restored to management by Exhibit Frexecuted by the senior male member, who had in due course succeeded the

person who took office under Exhibit XI. The suit is for redemption of a previous kanom of the Kovilagam property, and the main question raised

is whether the first plaintiff had authority to give the melcharth, Exhibit B. There is a subsidiary question as to whether, if she had no authority to

give Exhibit B. that was made good by the ratification of her action in doing so, constituted by the third plaintiff's pleadings. And, lastly, there is a

question as to the effect of the proceedings and the conduct of the third plaintiff in the lower Appellate Court and of his death during their pendency

in this Court and the refusal of his legal representative to follow his original pleadings.

2. Dealing first with the two points last mentioned, we have the conduct of the third plaintiff in the Appellate Court described in paragraph 5 of this

Court's judgment. Third plaintiff's connection with the case began, when he applied to be made a plaintiff in the Court of first instance, stating in

his affidavit that he approved of Exhibit B and that a decree for redemption of Exhibit B might be given to the second plaintiff. In the lower

Appellate Court, the Pleader for the third plaintiff as stated in paragraph 5 of the judgment under appeal, represented that he did not ask for a

decree on the strength of title. The language of the lower Appellate Court is not felicitous. But we understand it to have meant that the third plaintiff

did not ask for a decree in favour of the Kavilagam or himself, not that he in anyway withdrew his support of the second plaintiff or his suggestion

that a decree should be passed in the second plaintiff's favour. So far, we cannot see how the third plaintiff did anything which in any way

detracted from the effect of his previous affidavit as a ratification of the plaintiff's act in giving Exhibit B; whether it did effect a ratification of that

act we shall consider in the sequel.

3. Next, the legal representative of the third plaintiff in this Court was really joined as the legal representative of the second defendant although he

does not now rely on that character and has appeared before us only as representing the third plaintiff. His claim to do so is not being disputed by

any of the other parties. Mr. Krishna Varior on his behalf states that he desired to oppose the second plaintiff's claim and to repudiate the action of

the third plaintiff, in so far as it approved or ratified the grant of Exhibit B. We are not able to understand how this can be justified by Order XXII

Rule 4, Clause 2, or how that provision can be applied to the case of a legal representative whose predecessor never made or could have made a

defence at all. In *Birendra Kishore Manikya Bahadur v. Akram Ali* 13 Ind. Cas. 513 and *Rangasami Gounden v. Nachiappa Gounden* 50 Ind.

Cas. 498 : 42 M. 523 it was laid down as settled law that "he who has the right to complain must do so when the right of action is properly open

to him and he knows the facts." We are not able to understand how the present legal representative of the third plaintiff has any different legal

character from the third plaintiff himself or any which would enable him to abandon the third plaintiff's contentions in the present proceedings, with which alone we are concerned.

4. As regards his right to take other proceedings we of course express no opinion. We accordingly deal with the question of ratification as

between the first and the third plaintiffs. Third plaintiff in his affidavit referred to, said that on an examination of the records in the case he has

satisfied himself that the melkanom deed included in them and this salt are proper, beneficial and profitable to the Kavilagam and that all the reliefs

asked for in the plaint might be granted to the Second plaintiff. I here is no doubt that, unless some objection on that ground can be made good,

this language constitutes a clear ratification of the first plaintiff's action in giving Exhibit B. It is urged that it does not constitute such a ratification

with reference to Section 200, Indian Contract Act, on the ground that the grant of a melcharth, such as this, would have the effect of terminating a

right or interest of third persons, the defendants. We are unable to follow this argument. The grant of a melcharth in itself does not terminate the

interest of the prior mortgagee. That interest is terminated, not solely on account of the grant of melcharth but only if and when the melchartdar also

finds money for redemption and pays it to the previous mortgagee.

5. This failing, we have been referred to Section 196, Indian Contract Act, the argument being that there is no ratification, because the first plaintiff

did not purport to grant Exhibit B as the agent of any one competent to grant it; and in connection with this argument it has been urged further that

the grant of Exhibit B was simply void and on that account could not in any case be the subject of ratification. Exhibit B purports to be granted by

the first plaintiff as Valia Tamburathy, the title which she enjoys as the senior lady of the Kovilagam who would in the absence of any other

arrangement be competent to grant melcharth. The properties, the subject of the document, are described as belonging in the jenm to the lady's

Kovilagam, and the document recites that the melcharth amount has been received by her for the welfare of the Kovilagam. We think that Exhibit

B must be read as executed by the first plaintiff in the capacity of the person who was competent to represent the Kovilagam and as such to deal

with its properties. What is said is that there can be no representation of the

Kovilagam in the ordinary sense except by the person appointed under Exhibit XI who would correspond with the karnavan of a tartvad; and that on behalf of such a person first plaintiff could not act, because he could not delegate his own delegated authority to her. The fallacy in this argument is that it regards first plaintiff's action as founded only on Exhibit F and not on the ratification which third plaintiff's pleadings afford. Shortly, she can and does plead that she acted not on behalf of, but instead of the person empowered by Exhibit XI and that she acted on Dehalf of the members of the Kovilagam, who third plaintiff now represents, or his predecessor could have acted for; and we can sue no objection to her doing so or, after third plaintiff's ratifications of her acts, to their acceptance as valid. It is clearly useless to criticise the argument founded on ratification on the ground that the third plaintiff had no legal right to act on behalf of the Kovilagam. For that is exactly the reason why the doctrine of ratification is invoked. It has been urged that the doctrine cannot be invoked where the act generally is in itself void. >But the granting of the mdeharth by a person who is entitled to deal with the mortgaged property is not in itself void. We have been shown no instances in which an act has been held void for the present purpose where the only objection to the validity of the act is derived from its being done without proper authority. In these circumstance?, we hold that the grant of Exhibit B by the first plaintiff was ratified by the third plaintiff and that nothing has occurred since his ratification, which can deprive it of effect.

6. The result, is the second appeal is allowed, the lower Appellate Court's decision being set aside and the appeal being remanded for disposal according to law with reference to the other issues framed already. Costs to date in the lower Appellate Court and here will be costs in the appeal and be provided for in the lower Appellate Court's decree. The stampvalue on second appeal will be refunded on application. The question of costs at the trial in the Court of first instance will be dealt with by the lower Appellate Court on re-hearing with reference to the result thereof.