
(1963) 12 KL CK 0004

In the High Court Of Kerala

Case No : C.R.P. No's. 1001 of 1961, 247 and 738 of 1962, 32 of 1963, O.P. No's. 2549 and 2550 of 1962 and S.A. No. 75 of 1963

Krishnan Nair and Another

APPELLANT

Vs

Abdu

RESPONDENT

Date of Decision : 17-12-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 146
Constitution of India, 1950 — Article 13, 14, 19, 228, 255

Citation : (1964) KLJ 235

Hon'ble Judges : T.K. Joseph, J; T.C. Raghavan, J; P.T. Raman Nayar, J

Bench : Full Bench

Advocate : V.R. Krishna Iyer, M.M. Abdul Khader, K. Raghavan Nair in C.R.P. Nos. 1001 of 1961 and 247 of 1962, for the Appellant; V. Bhaskaran Nambiar in C.R.P. Nos. 738 of 1962, 32 of 1963 and S.A. No. 15 of 1963 in C.R.P. No. 247 of 1962, K. Kuttikrishna Menon, in C.R.P. No. 1001 of 1961 and in O.P. Nos. 2549 and 2550 of 1962, T.P. Kelu Nambiar, in C.R.P. No. 738 of 1962, M.M. Abdulkhader, in C.R.P. No. 32 of 1963, A. Achuthan Nambiar, in S.A. No. 75 of 1963 and V.P. Gopalan Nambiar, Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

P.T. Raman Nayar, J.—In these cases the validity of section 11A of the Kerala Agriculturists Debt Relief Act, 31 of 1958, which provides for the premature termination of melpattoms granted by an agriculturist before the commencement of the Act for periods of two years or more on application made by the grantor, is challenged by the grantees, melpattomdars as they are called. The original petitions are such applications withdrawn to this court under Article 228 of the Constitution while the revision petitions and the appeal are from orders made by subordinate courts on such applications. The cases have been referred to a Full Bench because of the general importance of the questions involved. Section 11A runs as follows:

11 A. Special provisions regarding certain melpattoms-

(1) This section applies to all subsisting melpattoms granted by an agriculturists before the commencement of this Act for periods of two years or more.

(2) Notwithstanding that the period of the melpattom has not expired, the person who granted the melpattom shall, on application, be entitled to terminate the melpattom on depositing into court one-third of the advance outstanding.

Explanation:-For the purpose of this sub-section "advance outstanding" means an amount which bears to the total amount of the advance the same proportion as the unexpired term of the melpattom bears to its full term.

(3) If there is dispute regarding the amount of the advance outstanding, the court may provisionally determine the amount after such summary enquiry as it deems fit and direct the deposit of the deficit, if any. On such deposit, the rights of the melpattomdar to collect the usufructs shall cease and the person who granted the melpattom shall be entitled to take the usufructs.

(4) As soon as may be after the provisional determination of the amount, the court shall, after due enquiry, finally determine the amount and pass orders-

(i) for the deposit of the deficit or the adjustment or refund of the excess, if any, as the case may be; and

(ii) directing the person who granted the melpattom to deposit the balance amount, if any, in ten equal half-yearly instalments together with interest which accrued due on such balance outstanding till the date of payment of each instalment at five per cent per annum, simple interest, the first installment being payable within a period of six months from the date of the first deposit or the date of the provisional determination of the amount of advance under sub-section (2) or sub-section (3) as the case may be.

(5) The melpattomdar shall have a charge on the land, the usufructs from which formed the subject of the melpattom, for the amount due, and such charge shall have priority over all other charges created after the date of the melpattom.

(6) Court fees on the amount outstanding after the deposit under sub-section (2) shall be paid by the applicant before the recording of evidence or, where no such evidence is recorded before the final determination under sub-section (4).

(7) An order passed under sub-section (4) shall also direct the sale of the land on which charge has been created under sub-section (5) for realising any amount due, and such order shall be deemed to be a decree.

And, "melpattom"-the Act itself spells the word differently in different places-is thus defined in section 2 (ff):

melpattam means any transaction relating only to the usufructs of trees for a specific period in recoupment of an advance made or promised.

2. The deeds in which the transactions in question are embodied call themselves melpattom deeds and the transaction, a melpattom. A melpattom (literally, a

lease of what is above the surface) is a lease of trees with no interest in the land, ordinarily enuring for one year-see Sundara Iyer's, Malabar and Aliyasanthana Law, pages 290 and 453 and C. Ramachandra Aiyar's, A Manual of Malabar Law, page 42. The principal argument advanced on behalf of the melpattomdars is, however, that the transactions we are considering, though called melpattoms, are really sales of goods, namely, coconuts, in one case arecanuts, as well, existing and future. The contention is that the transactions do not come within the definition of melpattom in section 2 (ff) which postulates a debtor-creditor relationship between the grantor and the grantee. If, however, they do, then section 11 A is beyond the legislative competence of the State and is also bad for offending Articles 14, 19, 301 and 304 of the Constitution.

3. The melpattom deeds in the original petitions are in similar terms and they lend themselves best-though by no means well enough-to the contention put forward. That in O.P. No. 2549 of 1962 may be translated (rather freely) thus:

Melpattom deed executed by Kunjikutty, son of Kunken, mason, to Balan, son of Narayanan, merchant. In the property (described) belonging to me on kuzhikanam right and in my possession, the pattam for the coconut produce

meaning mature nuts and excluding tender nuts, fronds and other produce of the trees) of all the coconut trees and plants excluding the one tree south of the house has been fixed at Rs. 100/- per year and (the property) given to you on melubhayapattom for a period of six years from this date. Hence, excluding the one coconut tree mentioned above you may enjoy the produce

of all the remaining coconut trees and plants in the property for the period of six years mentioned above ending with the 7th Thulam 1139 M. E. After the above said period I shall myself take and enjoy the produce. I have received an advance from you the melubhayapattom amount of Rs. 600/- for the above mentioned period of six years for discharging the mortgage on the property and for other purposes. Tax, purapad, etc., will be paid by me during the above period.

4. The deed in the second appeal may be taken as illustrative of the deeds in the remaining cases. (The deed in C.R.P. No. 1001 of 1961 is not in the record. It appears to have been put in evidence in a prior case u/s 9 (3) of the Act. But the order of the lower court shows that it was an ordinary melpattam deed in respect of coconut trees for a period of eight years at a rent of Rs. 100/- per year paid in advance):

Melpattom deed executed in favour of Abdulla, son of Ayyattu, Merchant, by Narayanan alias Krishnan Nambiar, agriculturist. All the cocoanut trees in the northern portion of the properties (described) held by me on kuzhikanam right are hereby given to you on melpattom for a period of ten years from today up to the 23rd Mithunam 1143. Accordingly you shall enjoy the aforesaid trees

from to-day on melpattom protecting and nourishing them

Of the purapad of Rs. 55/- per annum stipulated as payable by you I have to-day received a sum of Rs. 510/- in advance for discharging a debt charged on the property and for making improvements. This sum of Rs. 510/- shall be adjusted towards the purapad at the rate of Rs. 51/- per year for ten years and the balance of Rs. 4/- per year shall be paid by you to the jenmi on my behalf. On the 23rd Mithunam 1143, the date of expiry of the ten year period, you shall relinquish the melpattom right in my favour after taking the mature cocoanuts.

X X X

By this lease the land is not put in your possession.

5. In C. R. P. No. 247 of 1962, the melpattom is of coconut trees. It is by agriculturists in favour of a merchant for a period of eight years on an annual pattam of Rs. 240/- making a total of Rs. 1,920/- of which Rs. 250/- is reserved with the melpattomdar for the payment of tax and jenmi dues and the balance of Rs. 1,670/- received by the grantors in cash for clearing decree debts and obtaining a release of a prior melpattom.

6. In C. R. P. No. 738 of 1962, the melpattom is by a Nambudiri, a priest, to another Nambudiri, a teacher. It is of all the coconut and arecanut trees in the property for a period of seven years at a pattam of Rs. 75/- per year, the entire pattom of Rs. 525/- being received in advance for medical expenses. The cultivation of the land is to be done by the grantor.

7. In C. R. P. No. 32 of 1963, the melpattom is of coconut trees for a period of seven years, the pattom being Rs. 85.71 per year. The total pattom of Rs. 599.97 is received in advance for clearing off debts and for other purposes. The cultivation of the land is to be done by the grantor, but the protection of the trees is the responsibility of the melpattomdar.

8. In O. P. No. 2550 of 1962, the melpattom is of 35 coconut trees for a period of five years at a pattom of Rs. 200/- a year, the entire pattom of Rs. 1,000/- being paid in advance.

9. It is not necessary to set out at any length the terms of the melpattom deeds in these cases, for, it is not the case that, so far as the contention advanced on behalf of the melpattomdars is concerned, the terms of any of them place the case on a higher footing than the deeds which have been set out in full.

10. We have first to consider whether the transactions conform to the definition of "melpattom" in section 2 (ff). There can be no doubt that they do. The transactions relate only to the usufructs of trees. They are for specific periods and are in recoupment of advances made. An "advance" is money paid before it is due; a loan (Wharton Fourteenth Edn.); while, "to recoup" is to keep back something due; to recompense; repay (Wharton and Shorter Oxford English Dictionary). "Advance" has a wider significance than "loan" and "recoup" than "repay". Money may be advanced without being lent and recouped without being repaid. And, although "advance" used in conjunction with "recoupment" is

strongly suggestive of a loan-which, we think, is in substance what these transactions are, whatever the form they may have assumed-the definition of melpattom does not necessarily postulate a debtor-creditor relationship. There can be no doubt that in the transactions we are considering there is an advance made by the grantee to the grantor to be recouped by the former from the usufructs of the trees.

11. The constitutional questions raised seem to us to present little difficulty. Even if the pith and substance of the matter were a contract of sale of goods and not, as we think it is, agricultural indebtedness, the legislative competence of the State would be beyond doubt, the matter falling within entries 6 and 7 of List III of the Seventh Schedule; and the Act, having received the assent of the President, would be safe from attack on the ground of repugnancy with any law made by Parliament in respect of the same matter. Article 301 of the Constitution would in no sense be attracted, for, to provide for the annulment of certain contracts of sale is no more to interfere with the freedom of trade than to provide for their avoidance on account of fraud or other infirmity. The objection based on the proviso to Article 304 can in no event avail in view of Article 255, the Act having, as we have already seen, received the assent of the President.

12. We have no doubt that the transactions are what they profess to be, namely, leases of trees. In" each case the right conferred on the grantee by the grantor, in other words, the right transferred, is the right to enjoy the trees by taking their produce for a specified period for a rent. That in the transactions concerned in the original petitions the pattom or rent is fixed for the coconut produce cannot make the transaction a sale of existing and future goods, of coconuts already mature and ready for picking and those hereafter to come into being, even though the term

is used. In no case is the consideration paid by the grantee said to be the price of the produce he is to get in the future, and, despite the slight differences in wording, it is clear that in all the cases it is the trees that are granted on pattom. In any case, we find it difficult to conceive of a contract of sale of future goods to come into existence over such long periods (five years and more) with no reference whatsoever to their quantity or their price.

13. We think, however, that, in substance, the transactions are loans, virtually indistinguishable from a usufructuary mortgage of the trees, the profits from the trees for the specified period completely discharging the loan. In truth, what happens is that the owner of the land, who has planted and reared the trees and who continues to do all the necessary acts of cultivation, receives an advance from some other person and allows that person to reimburse himself by taking the yield of the trees for a specified period. Surely this spells agricultural indebtedness rather than an agricultural lease. That in some cases the duty of protecting or maintaining the trees

is cast on the grantee makes little difference, even if this means, as it is said,

that he is to manure the trees. The land remaining in the possession of the grantor all that this in practice means is that the cost of the manure and the labour is to be borne by the grantee. At best it confers on the grantee only a licence so far as the land itself is concerned.

14. No doubt if parties cast their bargain in a particular form we have to give effect to it in accordance with law irrespective of the object they might have had in mind. But, in testing a law against Article 13 of the Constitution, we must have regard to the substance of the matter with which the law deals rather than to the form the matter assumes. We think that the substance of the matter with which the impugned section deals is agricultural indebtedness and that what it provides for is the relief of such indebtedness. If that be so, it is not disputed that the section cannot be regarded as infringing either Article 14 or Article 19. If the melpattomdar is deprived of his melpattom rights, provision is made for the repayment of his money with interest as a charge on the property, and the restriction placed on his right to hold property, namely his melpattom right, is but a reasonable restriction in the interests of the general public. And there would be no substance in the charge that melpattomdars are being discriminated against in that, while other agricultural lessees are being given fixity of tenure, the impugned law provides for premature termination of melpattoms. The position of a melpattomdar is more that of a usufructuary mortgagee than of an agricultural lessee, and the impugned section is but a counterpart of section 11 which provides for the premature redemption of usufructuary mortgages. That, in enacting the impugned section, the legislature thought that an agriculturist who has parted with the trees on his land on a melpattom is in a like case with one who has parted with land on a usufructuary mortgage, is clear from the following extract from the report of the Select Committee to which the Bill was referred:

It is considered by the Committee that benefits similar to those conferred on agriculturists who have mortgaged their property on usufructuary mortgage should be conferred on agriculturists who have granted melpattoms before the commencement of the Act for periods of two years or more. A new section 11A is proposed to be inserted in the Act for this purpose.

15. We hold that section 11 A of the Act is valid and that the transactions in these cases are melpattoms to which this section applies.

16. In two of the cases, C. R. P. No. 1001 of 1961 and C. R. P. No. 247 of 1962 the question arises whether the right conferred by section 11A is personal to the grantor or is available to those claiming under him, his Heirs, legal representatives and assigns. The general principle is-and section 146 of the CPC embodies this principle-that a statute or other law conferring rights and imposing liabilities must be deemed to apply to representatives also unless the rights and liabilities are personal. The question then is whether, under the terms of section 11 A, the right is personal to the grantor. We think it is. What sub-section (2) of the section says is that the person who granted the melpattom shall, on

application, be entitled to terminate the melpattom, and we find it difficult to read into the words, "the person who granted the melpattom", the words, "or his heirs, legal representatives or assigns". It is fallacious to argue that because the grantor of a melpattom is, or can be regarded as, a debtor and according to section 2 (fff) of the Act the word "debtor" must be read as including his heirs, legal representatives and assigns, the heirs, legal representatives and assigns of a person who has granted a melpattom must be entitled to make an application u/s 11 A (2). Section 11 A does not use the word "debtor"; all that section 2 (fff) requires is that the word "debtor" wherever it appears shall, unless the context otherwise requires, be read as including the heirs, legal representatives and assigns of the debtor; and, even if the grantor of a melpattom be a debtor, section 2 (fff) is hardly relevant for the purpose of determining whether the words "the person who granted the melpattom" can be read as including the heirs, legal representatives and assigns of such a person. On a plain reading they cannot. And the very fact that the Act defines "melpattomdar", "mortgagee", "debtor" and "creditor" as including the heirs, legal representatives and assigns of the melpattomdar, mortgagee, debtor and creditor respectively, without enacting a similar definition in respect of the person who granted the melpattom is an indication that the heirs, legal representatives and assigns of the grantor are not included within that expression. And, if we were to hold that persons claiming under the grantor would be entitled to the benefit of section 11 A (2), it would mean that they would be entitled to the benefit even though they are not agriculturists provided the melpattom was granted by an agriculturist. For, the proviso, to section 2 (fff) which requires the heirs, legal representatives and assigns of a debtor to be agriculturists if they are to be regarded as debtors would not be available.

17. It is true that in *Raghavan Nair v. Daniel* (1959 K. L. J. 1462 = 1959 KLT 1232) an assign of a mortgagor was held entitled to make an application u/s 11 (2) of the Act. But that was because in ordinary use, especially in relation to their mutual rights and liabilities the words "mortgagor" and "mortgagee" had long since acquired the meaning assigned to them in section 59 A of the Transfer of Property Act as including persons deriving title from the original mortgagor and the original mortgagee although the definition in the section is expressly confined to the Chapter in which it appears-in fact the words had been so read even before the definition was introduced. And it must also be remembered that the decision referred to was rendered at a time when section 2 (fff) which contains this inclusive definition of a mortgagee but not of a mortgagor was not in the Act.

18. It is not for us to speculate whether the legislature deliberately excluded those claiming under the grantor of a melpattom from the benefits of section 11 A or whether the exclusion was the result of mere oversight. But we think it not unreasonable that the benefit should be personal to the grantor, the case of a grant on behalf of a joint family being possibly saved by Explanation I to clause (a) of section 2 read with clause (d) though, even here, some difficulty might

arise because of the restriction of the explanation to the purposes of the clause.

19. In the original petitions final orders are yet to be made, and we direct that these cases be returned to the courts from which they were withdrawn together with a copy of this judgment for disposal in conformity therewith. There is no appearance here for the grantors of the melpattoms and we make no order as to costs in this court.

20. In C. R. P. No. 1001 of 1961, the application u/s 11A was by the legal representatives of the grantor, and, whatever might be said of the reason given for its dismissal, in the view we have taken that the right to make an application under the section is personal to the grantor, the dismissal is right. We dismiss this petition with costs.

21. In C. R. P. No. 247 of 1962, the application is a joint application by the four grantors and by another person who was not among the grantors but to whom the property was allotted by a compromise partition decree. We think this application must fail, for, the grantors, having no longer any interest in the property, have no locus standi for maintaining the application—that the right conferred by section 11A (2) is personal to the grantor does not mean that the right continues to reside in him after he has ceased to have any interest in the property, for, only the present and not a past owner of the reversion that can determine a lease—and the person who now owns the property has no right to make an application since he is not the grantor. Accordingly we consider that, in allowing the application, the court below exercised a jurisdiction not vested in it by law. Accordingly we allow this petition and dismiss the application but make no order as to costs.

22. In C. R. P. No. 738 of 1962, the application was by the grantor of the melpattom and the contentions of the melpattomdar that no interest had been deposited on the 1/3rd amount outstanding and that he had been promised a lease of the property were rightly rejected by the court below. We dismiss this petition with costs.

23. In C. R. P. No. 32 of 1963 also the application was by the grantor and the contention of the melpattomdar that the amount advanced by him on a subsequent melpattom granted after the commencement of the Act, to take effect in 1964 on the expiry of the present melpattom, should also be taken into account was rightly negated by the court below. We dismiss this petition with costs. In the Second Appeal the application was by the grantor and it has been rightly allowed by the courts below. We dismiss with costs this appeal by the melpattomdar.