
(1961) 05 KL CK 0003
In the High Court Of Kerala
Case No : S.A. No. 139 of 1956 (K)

Kunhavulla and Another

APPELLANT

Vs

Ammad and Others

RESPONDENT

Date of Decision : 31-05-1961

Acts Referred:

Kerala Agrarian Relations Act, 1961 — Section 34

Citation : (1961) KLJ 681

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : C.K. Viswanatha Iyer, for the Appellant; K.N. Karunakaran for Respondents 2 and 3, for the Respondent

Judgement

Velu Pillai, J.—The suit which has given rise to this Second Appeal, was instituted by the two appellants, for the realization of rent due for the year 1129 M. E. under a registered "marupat" Ext. A1, executed by the first respondent-first defendant, in favor of the fifth defendant in the case. The suit property belonged to the thavazhy of the fifth defendant and her children, defendants 6 to 9. By Ext. A2 dated January 19, 1953, the fifth defendant, acting also as the guardian of defendants 6 to 9, assigned the reversion of the leasehold in favor of the appellants. The first respondent had transferred his rights under the lease, in favor of defendants 2 to 4, who are respondents 2 to 4 in this Second Appeal. On the contention of the first respondent, the trial Court exonerated him from liability; it also dismissed the suit against respondents 2 to 4, accepting the contention, that Ext. A2, being unsupported by thavazhy necessity, was void u/s 33 of the Madras Marumakkathayam Act. The appellate Court confirmed this. In this Second Appeal, the point was taken, that even if Ext. A2 is unsupported by necessity, it cannot be held to be void and that the respondents who are strangers to the thavazhy are not entitled to impeach Ext A2 on this ground. It may be mentioned now that defendants 5 and 6 to 9, have supported Ext. A2 and the appellants' claim in full. Section 33 of the Madras Marumakkathayam Act, as amended by the Malabar Tenancy (Amendment) Act, 1951, reads:

No sale or mortgage of any immovable property of a tarwad and no lease of any such property..... shall be valid, unless it is executed by the karnavan for consideration, for tarwad necessity or benefit, and with the written consent of the major members of the tarwad.

Considerable stress was laid for the respondents, on the words, "no sale or mortgage..... shall be valid....." as implying, that the transaction is void. I cannot lend support to the view, that once a document is declared to be not valid, it is necessarily void, and void against the whole world. Section 22 of the Travancore Ezhava Act of 1100 also employs the words "no mortgage..... shall be valid....." and yet, in *Ameen Pillai Ayidrose v. Maluk Muhammed Abdul Kadir*, 1952 K. L. T. 695, the Travancore-Cochin High Court has held, that a transaction cannot be impeached under it, by strangers to the tarwad. Though there is some difference in the language of Section 23 of the Travancore Nayar Act of 1100, of Section 9 of the Cochin Nambudiri Act of 1114 and of Section 21 of the Travancore Ezhava Act of 1100, which employ words, such as, "except for consideration and tarwad necessity..... no karnavan shall sell", and a plea, that transactions brought about in contravention of these provisions are void might perhaps be regarded as open, the Courts have consistently rejected such a plea as proceeding from strangers to the tarwad who could not be permitted to take it. See *Sivarama Konar v. Thruvadinatha Pillai* (1956 K. L. T. 880), *Kanakku Ariyan Krishna Panikkar v Madhavi Amma Bhargavi Amma* (20 T. L. J. 1375), *Madhavan Damodharan v. Govindan Kunju* (1955 K. L. T. 896) and *Mangu Thampi Kavunni Karthavu v. Narayanan Nair* (A. I. R. 1953 T. C. 269). The principle has been stated thus, in the context of Section 9 of the Cochin Nambudiri Act, XVII of 1114 in *Pareeth v. Alavi* (37 Cochin 96) by Krishnaswami Iyengar C. J:

It is quite obvious that the Section was enacted to protect the rights of the tarwad against the improper and improvident acts of its karnavan, and so long as the other members of the tarwad do not choose to challenge an alienation made by him, there is no reason for regarding it as null and void ab initio, so as to put in the power of a tenant or any other person who is a stranger to the tarwad, to ignore it and thereby evade his own obligations. The alienation must be held to have the character of a void transaction only so far as the members of the tarwad are concerned, and not as against the rest of the world.

As I understand, the word "void" has to be understood as, not binding on the tarwad and not, as is expressly stated, as against others. This principle must, in my opinion, equally apply to Section 33 of the Madras Marumakkathayam Act as amended, as also to similar provisions in the analogous Statutes adverted to above.

2. The Learned Counsel for the respondents invited my attention to the different phraseology in Section 33 of the Marumakkathayam Act, as it was before and as it is after, the amendment of 1951. Before the amendment, the words were,

more or less, as in Section 25 of the Nayar Act of 1100, being "except for consideration and tarward necessity..... no karanavan shall sell....." Notwithstanding this difference, I hold that the principle quoted has application and as stated, decided cases on the various enactments have also taken the same view.

3. The Courts below have relied on Kuttikrishna Menon v. M. M. Purushothaman Nambudiri (A. I. R. 1936 Madras 223) where a "melcharth" executed by the trustee of a religious endowment without the sanction of the Endowment Board, as prescribed by Section 72 of the Madras Hindu Religious Endowments Act (1 of 1925), was held to be invalid. It does not appear, that there was any scope in that case, for the contention being raised, that a stranger to the trust could not plead its invalidity; the fact remains, that none was raised. The decision was simply, that the transaction was invalid, as being in contravention of Section 72. It is not also clear, that a prescription as to sanction, conceived for securing greater departmental control over trusts in the larger public interest, can be considered to be similar to the provisions in these enactments. I hold that Ext. A2 is not liable to be impeached by respondents 2 and 3; in any event, there is no basis for the contention, that it is void against the respondents. The result is, that this Second Appeal is allowed, the decree dismissing the suit is set aside, and a decree is given to the appellants in terms of the plaint against respondents 2 to 4. The appellants will realize their costs in all the Courts from respondents 2 and 3. It needs no mention, that this decree will not prejudice the right, if any, of respondents 2 to 4 to discharge their liability for rent in terms of Section 34 of the Kerala Agrarian Relations Act, 1960.