

(1911) 11 MAD CK 0079
In the Madras High Court

M. Achutha Menon

APPELLANT

Vs

V.C. San Kara Nair and Others

RESPONDENT

Date of Decision : 02-11-1911

Acts Referred:

Citation : (1913) ILR (Mad) 380

Hon'ble Judges : Sundara Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. The plaintiff is a melcharth holder under the jenmi of certain land in the possession of the fourth defendant who purchased the rights of one Krishna Sastri. The land was demised to Krishna Sastri, the father of defendants Nos. 1 to 3, under Exhibit VII in 1893 by a stanom-holder, a predecessor in title of the fifth defendant on "Karamkari tenure." The document provides that the land should be held by the demisee and his anandravans "so long as they exist" "without selling or mortgaging," duly paying the rent fixed and also paying the renewal fee at times of renewal and "receiving that" from the stani. Before the time of renewal arrived, however, the land was demised on melcharth to the plaintiff. The original demisee's heirs (defendants Nos. 1 to 3) in the meanwhile had alienated the holding to the fourth defendant. The principal question we have to decide is whether the right given to the demisee under Exhibit VII was terminated by the alienation. The Subordinate Judge has held on the authority of Parameshri v. Viitappa Shanbaga I.L.R., (1903) . Mad., 157 and Netrapal Singh v. Kalyan Das I.L.R., (1906) All., 400. that the alienation did not put an end to the holding. Those decisions have really no bearing on the present case. They held on the construction of the documents in question therein that the clause forbidding alienation without a provision for re-entry in case of alienation did not give the landlord a right to eject. The question we have to decide is whether non-transferability is one of the incidents of "Karamkari tenure." If it is, the absence of an express provision for re-entry in case of alienation would be immaterial. Perpetual occupancy right without rights of alienation is well known in this country. Our attention has not been drawn to any case in which the question of a

"Karamkari" holder's right to transfer has been decided. The learned vakil for the appellant relies on the opinion of the Sudder Court in its proceedings of the 5th of August 1856. The proceedings have always been treated as authoritative and may be relied on in the absence of any precedents. The observations made regarding "Karamkari" are as follows: "In this case the land is made over for permanent cultivation by the tenant in return for services rendered. Where the proprietary title is vested in a pagoda, the grant will be made for future services.

2. In some cases land is mortgaged on this tenure, the kanam mortgagee paying the surplus rent produce to the landlord, after deducting the interest of the money he has advanced. The tenant has, in North Malabar, only a life-interest in the property, which at his death reverts to the landlord. In the South, the land is enjoyed by the tenant and his descendants, until there is a failure of heirs, when it reverts to the proprietor. Except where the land is granted for special services, an annual rent is payable under this tenure. The tenant's right is confined to that of cultivation, but it is permanent, and he cannot be ousted for arrears of rent, which must be recovered by action, unless there be a specific clause in the deed declaring the lease cancelled, if the rent be allowed to fall into arrears." -- Moore's "Malabar Law and Custom," page 308.

3. It will be observed that a "Karamkari" holder in North Malabar has no heritable right at all, and with respect to South Malabar the right of reversion in the landlord prima facie supports the appellant's contention that the tenure is inalienable. Moreover the tenant's right is stated to be "confined to that of cultivation" though it is permanent. The word "Karamkari" or "Karamakari" itself means only permanent right of cultivation. The language of the instrument shows that the cultivator has no right of alienation. We must therefore hold that the alienation put an end to the right created by Exhibit VII. The plaintiff is therefore entitled to a decree for possession. Payment of rent by the fourth defendant to the fifth defendant is not valid as against the plaintiff. He is therefore entitled to a decree for rent also. The decree of the Lower Appellate Court is reversed and that of the District Munsif restored with costs payable by the fourth defendant both here and in the Lower Appellate Court.