
(1907) 11 MAD CK 0007
In the Madras High Court

M. Tuppan Nambudri

APPELLANT

Vs

V.P. Chinna Pari Kutti

RESPONDENT

Date of Decision : 29-11-1907

Acts Referred:

Transfer of Property Act, 1882 — Section 76

Citation : (1908) 18 MLJ 31

Judgement

1. The material conditions in the kanom now in question may be summarised as follows: In consideration of an advance of Rs. 795-8-0 the

mortgagee is to hold possession, for 12 years, of land yielding a pattam of 80 paras of paddy and Rs. 40 and is to pay a purappad of 12 paras of

paddy and 12 fanams and 50 cocoanut leaves ""having deducted interest and Government revenue.

2. The revenue having been increased at the recent settlement, the question is whether the difference between the old and the new is to be paid by

the mortgagee or by the mortgagor.

3. It is conceded that the provisions of Section 76 of the Transfer of Property Act are to be applied to this case, but contended that the kanom

contains a contract to the contrary"" within the meaning of that section so as to relieve the mortgagee of the payment of any taxes which were not

payable at the commencement of the period covered by the kanom.

4. Mr. Anantakrishnaiyar's argument amounted to this: The pattam and the purappad are fixed; the nigudi was known when the contract was

entered into, and the balance of pattam after payment of purappad and nigudi is reserved for interest. The contract does not contemplate the

cutting down of the interest, and therefore all payments over a-1 above those

provided for in the contract must be made by the mortgagor.

5. This argument assumes that the pattam is a constant factor, but the pattam seems to be merely an estimate and the amount realised by the

mortgagee will, of course, vary directly with the annual yield of the land. It is quite clear that the contract does not provide for a reduction of

purappad in the event of a failure of crop, and it cannot bind the Government to reduce the nigudi in a like event. Consequently, in the

contemplation of the contract, if a failure of crop reduces the pattam, the loss must necessarily fall on the interest, the whole fund being ex

hypothesi divided among purappad, interest and nigudi, and so, if in consequence of a rise in prices or a good season, the pattam increases in

value, the increase will go to benefit the mortgagee unless it be wholly or partially absorbed by an increase in the nigudi.

6. Neither nigudi nor interest is stated in the contract as a fixed sum, and both are lumped together as sums to be deducted by the mortgagee

before paying his purappad.

7. The amount of the nigudi, like the pattam, is beyond the Control of either party to the contract, and if the contract contemplates a possible

fluctuation in the interest, why should it not also contemplate a fluctuation in the nigudi? There seems to us to be nothing in the contract to negative

the conclusion that such a fluctuation was contemplated, and, if that is so, the burden of the fluctuation must fall on the mortgagee; there is no

contract to the contrary. But even in the view that the contract was not intended by the parties to provide for fluctuation either in pattam or nigudi

(and that is perhaps the common sense view of the matter), still there is nothing to throw on the mortgagor the burden of providing the increase in

the nigudi - no contract contrary to the rule laid down in Section 76.

8. It is not necessary to discuss the various unreported cases cited before us; each decision depends upon the construction of the contract with

which it deals, but some of the decisions seem to go rather far, almost, indeed, to the length of requiring the mortgagor to prove a contract in his

favour. The law requires the mortgagee to bear the burden, if he is not relieved of it by his contract, and he is not so relieved here.

9. The lower Court's decision is reversed and the suit dismissed with costs throughout.