

(1930) 09 MAD CK 0015
In the Madras High Court

Nappalli Kandiyilthamasikkum Puthiyottil Kanhiratan Govinda Kurup APPELLANT

Vs

Chowakkaran Keloth Beekku alias Beekutti Umma (dead) and Others RESPONDENT

Date of Decision : 02-09-1930

Acts Referred:

Transfer of Property Act, 1882 — Section 105

Citation : (1930) 32 LW 814 : (1930) 59 MLJ 941

Judgement

1. Plaintiff is the appellant. On the strength of a lease of Immovable property (lands) granted to him by defendants 1 and 2 by means of the registered Marapat, dated 28th December, 1919 (the original of Ex. B), which was executed by the plaintiff to defendants 1 and 2, he filed the present suit to recover possession of those lands from defendants 3 and 4, who are in occupation thereof, as lessees under the tarwad of 1st defendant, under a renewed lease granted by the 14th defendant as Karnavan on 13th January, 1920, as per Ex. I. Both the Lower Courts have held that the plaintiff has not acquired a valid right to the suit property under the lease set up by him and dismissed his suit.

2. The 1st defendant belongs to a rich Moplah tarwad. In 1918 and 1919, the then Karnavan, Makki Keyi allotted some properties of the tarwad for the maintenance of 1st defendant (a minor) under the deeds Exs. III and IV. The suit lands are comprised in Ex. IV. There is no doubt that when the melcharth was given to the plaintiff as per Ex. B, dated 28th December, 1919, the 1st defendant who was a minor, was the sole owner thereof. The 2nd defendant is her husband. The Marupat or the lease deed (Ex. B) was executed by the plaintiff (lessee) to defendants 1 and 2,

but the 2nd defendant had no right or interest in the suit property, and was not therefore competent to grant a lease of the same. The custom

alleged by the plaintiff, whereby the husband of a Moplah woman has the right to manage the properties given to her for maintenance, in order to

make out the validity of the lease in question, treating it as one granted by the husband (2nd defendant), has been found by the Lower Appellate

Court to be unproved. I accept that finding as correct. The question therefore has to be decided on the footing that the lease in question was

granted to the plaintiff by the 1st defendant (the owner of the suit property) when she was a minor. Is such a lease valid and enforceable ?

3. A lease of Immovable property, as defined in Section 105 of the Transfer of Property Act, is a transfer of a right to enjoy such property, made

for a certain time or in perpetuity, in consideration of payment of rent in cash or kind. A lease is necessarily a transfer of an interest in Immovable

property by the lessor in favour of the lessee. A minor is not competent to contract, and, u/s of the Transfer of Property Act, it is only a person

competent to contract and entitled to transferable property, that can transfer such property, either wholly or in part to another person. Any transfer

of such an interest by the 1st defendant (a minor) by the transaction of lease relied on by the plaintiff would, therefore,, be void. A sale is a transfer

of ownership in Immovable property, in exchange for a price. A mortgage is the transfer of an interest in Immovable property, in consideration of a

loan, for securing the repayment of it. There is no doubt that a sale by a minor, and a mortgage by a minor, are invalid, and unenforceable. In

Mahori Bibee v. Dhurmodas Ghose (1902) L.R. 30 IndAp 114 : ILR 30 C. 539 (P.C.) their Lordships of the Privy Council have held, that not

only is a mortgage made by a minor void, but even on a decree being given declaring the mortgage invalid, the lender was not en-titled to the

repayment of the money advanced to the minor under that invalid mortgage. It is not conceivable how a lease by a minor can be valid, while a sale

or a mortgage by a minor is void, if regard be had to the fact that just as in the case of sale or mortgage, there is a transfer of an interest: in

Immovable property, namely, the right to enjoy such property in a lease by the lessor to the lessee.

4. Mr. C. S. Venkatachariar for the appellant made a strenuous endeavour to differentiate a lease by a minor, from a sale or a mortgage by a

minor, inasmuch as the Marupat of the lease deed (Ex. B) was executed not by the minor (1st defendant) but by the plaintiff (lessee) to the 1st

defendant (lessor). It is true that in the case of a sale or a mortgage, the deed should be executed by the seller, or the mortgagor. But in the case of

a lease Section 107 of the Transfer of Property Act does not expressly state by whom the registered instrument should be executed, the lessor, or

the lessee, or both It has been held by a Full Bench of this High Court in Syed Ajam Sahib v. Ananthanarayana Aiyar ILR (1910) M. 95 : 21

M.L.J. 202 that the registered instrument referred to in that section need not necessarily be an instrument signed by the lessor, and such a lease

may be created by a registered instrument signed by the lessee and accepted by the lessor. The fundamental conception of a lease involves the

"transfer of an interest in Immovable property by the lessor to the lessee, and if a valid lease can be created even by a registered instrument signed

by the lessee and accepted by the lessor, it must be deemed to have effected a transfer of an interest in Immovable property by the lessor to the

lessee. If by reason of the lessor's minority, he is incompetent to make the transfer at all, the fact that the instrument is not signed or executed by

him, but only to him cannot make any difference. By necessary implication, it amounts to a transfer by the lessor (in this case, a minor) and if it

should be contended, that because Ex. B is not signed or executed by the 1st defendant, there was no transfer by the minor, it would follow, that

there was no lease at all. It seems to me clear that the invalidity of the lease in question by reason of the minority of the lessor cannot be got over

by the circumstance that the instrument Ex. B was executed to her, and not by her. A lease is essentially a bilateral contract. On the part of the

lessor, there must be a transfer of an interest in Immovable property by him and on the part of the lessee, there must be a promise to pay the rent.

These are reciprocal considerations. In the present case, the lease deed Ex. B though executed by the lessee (plaintiff) expressly recites ""you have

hereby demised to me the said two items of property"". It means, that under this deed executed by me and accepted by you, you have transferred

the right to enjoy the two items to me. Such a transfer by a minor, who is incompetent to make the transfer, is now sought to be enforced by the

plaintiff as the basis of his claim to recover possession of the properties from defendants 3 and 4. This case has, in my opinion, no close analogy to

a case of a sale in favour of a minor who has already paid the price, or a mortgage in favour of a minor who has already advanced the loan. The

Full Bench decision in *Raghavachariar v. Srinivasaraghava-chariar* ILR (1916) M. 308 : 31 M.L.J. 575 deals with such a mortgage in favour of a

minor. The observations in the judgment of the learned Chief Justice in that case seem to be quite in consonance with the contention of the

respondents in respect of the lease in question. There is a very elaborate discussion in the judgment of Srinivasa Aiyangar, J., in that case, and

reference was made to several passages in that judgment by the learned Advocate for the appellant. After a careful consideration, I am unable to

find any definite pronouncement in that judgment for holding that the lease in the present case relied on by the plaintiff is valid and enforceable. I

agree with the Lower Appellate Court's view on this point.

5. The dismissal of the plaintiff's suit is therefore correct, and this second appeal is dismissed with costs.