

**(1965) 11 KL CK 0025**  
**In the High Court Of Kerala**  
**Case No : A.S. No. 152 of 1962**

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|---------------------------------|----|------------|
| Neelacanta Iyer Subramania Iyer | Vs | APPELLANT  |
| Thommel George and Others       |    | RESPONDENT |

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**Date of Decision :** 03-11-1965

**Acts Referred:**

Kerala Agriculturists Debt Relief Act, 1958 — Section 11(2), 2

**Citation :** AIR 1966 Ker 170

**Hon'ble Judges :** M.S. Menon, C.J; V.P. Gopalan Nambiyar, J

**Bench :** Division Bench

**Advocate :** P.C. Chacko and N. Narayanaswamy, for the Appellant; K.P. Abraham, K.K. Poulose and George P. Muricken, for the Respondent

**Final Decision :** Allowed

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## Judgement

1. This is an appeal from the decision in A. D. R. A. No. 27 of 1959 of the Principal Sub Court of Alleppcy. The appellant was the first counter-petitioner in that application.
2. The application which has been allotted was for relief u/s 11 of the Kerala Agriculturists Debt Relief Act, 1968. That section embodies the special provision in respect of usufructuary mortgages executed by agriculturists. Sub-section (1) of that section provides that the section subject to the pro-visions of Section 25 with which it is agreed we arc not concerned --- applies to all subsisting mortgages executed by an agriculturist at any time before the commencement of the Act and by virtue of which the mortgagee is in possession of the properly mortgaged to him or any portion thereof.
3. There is an explanation to Sub-section (1). It is agreed that the explanation is of no consequence to this case.
4. Sub-section (2) of Section 11 provides: "Notwithstanding that the period of the mortgage has not expired, the mortgagor shall on application be entitled, subject to the pro-visions of Sub-sections (3) and (4), to recover the property

mortgaged on depositing in the court-

(a) one half of the mortgage amount;

(b) where payment of interest to the mortgagee has been stipulated for in respect of the principal amount secured by the mortgage or any portion thereof, in addition to the usufruct from the property, or in respect of any other sum payable to the mortgagee by the mortgagor in his capacity as such and there has been arrears of such interest, such arrears; and

(c) the value of improvements, if any effected subsequent to the date of the mortgage by the mortgagee in the property mortgaged, as determined by the Court." The applicant in A. D. R. A. No. 27 of 1959 was not the executant of the usufructuary mortgage with which we are concerned. It was his father who executed that mortgage and it was by succession on the death of his father that the applicant obtained the equity of redemption.

5. The first question for determination is whether the right conferred by Sub-section (2) of Section 11 is confined to the executant of the mortgage as contended by counsel for the appellant or whether it extends to the heirs, legal representatives and assigns of the mortgagor as well as contended by counsel for the respondents. The word used in Sub-section (2) is "mortgagor", and that word has not been defined in the Act.

6. Section 11A of the Act contains the special provisions regarding melpattoms. According to Sub-section (1) of that section, the section applies to all subsisting melpattoms granted by an agriculturist before the commencement of the Act for periods of two years or more. Sub-section (2) of that section provides:

"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 subsection advance outstanding" means the 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."

7. The expression "mortgagor" which occurs in Sub-section (2) of Section 11, as already mentioned, is not defined in the Act. The word "mortgagee", however, is defined in Section 2(fff) along with the words "melpattamdar". "debtor" and "creditor". According to Section 2(fff) expression "melpattamdar", mortgagee," debtor and "creditor" include the heirs, legal representatives and assigns of the melpattamdar mortgagee, debtor and creditor respectively, subject to the proviso that in the case of a debtor such heirs, legal representatives and assigns are also agriculturists as defined in the Act.

8. In Ravarichandiyil Krishnan Nair and Others Vs. Thayyullathil Abdu and Others, , the question whether the right conferred by Section 11A was personal to the grantor of a melpattom came up for consideration. The Court said:

"The question is whether, under the terms of Section 11A, 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 11A(2) Section 11A 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 11A(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.

It is true that in *Raghavan Nair v. Daniel*. 1950 Ker LT 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 59A 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."

9. In *Varkey v. Sankaran* 1965 Ker LT 519 Velu Pillai J. had to deal with Section 11 of the Act itself. The learned Judge referred to the decision mentioned above, and said:

"Prior to the decision of the Full Bench it was held in 1959 Ker LT 1232 that a

mortgagor's assign is entitled to the benefit of Section 11 of Act XXXI of 1958 Before the Full Bench the question was whether the assignee of the person who granted a melpattom was entitled to the corresponding relief u/s 11A of the Act. The Full Bench relied principally on Section 2(fff) of the Act, which was introduced in it by the amending Act of 1961 and which is as follows:

" "melpattomdar mortgagee", "debtor" and "creditor" shall include the heirs, legal representatives and assigns of the melpattomdar mortgagee, debtor and creditor respectively."

"The consideration which weighed with the Full Bench was, that while a melpattomdar was meant to include his assignee the grantor of a melpattom was not meant to include his assignee. By parity of reasoning, Section 2(fff) gives rise to a similar interpretation of the term "mortgagor" as distinguished from the term mortgagee" Indeed this was adverted to by Mr. Justice Raman Nayar in delivering the judgment of the Full Bench and was explained as a consideration which was not present when 1959 Ker LT 1232 was decided. In my opinion the discussion in the judgment of the Full Bench, applies with equal force to the case of an assign of a mortgagor. I am therefore led to hold, that 1959 Ker LT 1232 can no longer stand and that the respondent, as the assign of the mortgagor is not entitled to the benefit of the Act."

10. In an earlier decision, Kunhappa Kurup v. Madhavi Amma. 1965 Ker LT 789 reported later--Section 11 came up for consideration before Vaidialingam, J. The learned Judge referred to the Full Bench decision in 1964 Ker LT 94 : (AIR 1955 Ker 39 ), and said

"The learned Judges having due regard to the provisions of Sub-section (2) of Section 11A wherein it is specifically stated:

"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 have held that the relief can be claimed u/s 11A only by the person who has granted melpattom and an assignee from such a person has no right at all to seek relief u/s 11A. I do not think that the principle laid down by the learned Judges in the above decision has any application to the matter on hand. On the other hand Section 11(1) speaks of the provisions being applicable to mortgages executed by the agriculturists and Sub-section (2) gives right to the mortgagor to make an application under the circumstances mentioned therein.

There is no provision in Sub-section (2) of Section 11 similar to what is found in Sub-section (2) of Section 11A. Anybody who occupies the position or has got the status and liability of a mortgagor in law, in my opinion, is entitled to file the application u/s 11(2) of the Act, inasmuch as such a person will satisfy the requirements of the expression "the mortgagor" occurring in Sub-section (2) of Section 11. I do not find anything in Section 11 which compels this Court to come to the conclusion that the rights conferred under that section are only personal to

the actual party who executed the mortgage.

In fact, such a construction will lead to very anomalous results and inasmuch as there is absolutely no scope for placing any such restriction u/s 11 the contention of the learned counsel for the appellant regarding the maintainability of the application filed by the respondent on the ground that he is only an assignor from the mortgagor has to be overruled."

11. The expression "the person who granted the melpattom" in Sub-section (2) of Section 11.A must have been used because of the absence of a single word for denoting such a person either in English or in Malayalam. If a single word like mortgagor was not available for a person executing a mortgage, the expression in Sub-section (2) of Section 11 might very well have been "the person who executed the mortgage" It there is any anomaly in construing the word "mortgagor" in Sub-section (2) of Section 11 as restricted to the executant of the mortgage and as not including his heirs, legal representatives and assigns the same anomaly obtains in construing the expression "the person who granted the melpattom" in Sub-section (2) of Section 11A as restricted to that person and as not including his heirs, legal representatives and assigns as has been done by the Full Bench in Ravarichandiyil Krishnan Nair and Others Vs. Thayyullathil Abdu and Others, .

12. We think the correct conclusion is the one reached by Velu Pilial, J. in 1965 Ker LT 519 namely, that the right granted to a mortgagor in Sub-section (2) of Section 11 is a right confined to him, that it docs not extend to his heirs, legal representatives and assigns, and that the contention of the appellant must prevail. It we are to hold that the expression ""mortgagor" in Sub-section (2) of Section 11 includes his heirs, legal representatives and assigns, the benefit will accrue to them even they are not agriculturists as there is no inhibition like the one contained in the proviso to Section 2(fff) of the Act.

13. It was common ground that if our conclusion is as stated above, no other question arises for consideration and that this appeal should be allowed. We do so; hut in the circumstances of the case without any order as to costs.