

(1943) 01 MAD CK 0030
In the Madras High Court

Orupulasseri Manakkal Karnavan and Manager Bhavadasan
Nambudripad

APPELLANT

Vs

Kottilingal Madhathil Kunhukutty Amma's son Tarwad
Karnavan and Manager Narayana Nair and Others

RESPONDENT

Date of Decision : 19-01-1943

Acts Referred:

Citation : AIR 1943 Mad 550 : (1944) ILR (Mad) 37 : (1943) 56 LW 188 :
(1943) 1 MLJ 328

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The first of these cases arises out of a suit by the appellant, who is the jenmi, for redemption of a kanom and eviction of the

tenant. The second case arises out of an application by the tenant for renewal under the provisions of the Malabar Tenancy Act XIV of 1930. The

cases have been placed before a Bench because they involve a question of some difficulty, relating to the interpretation of Clause 3 of Section 25

of that Act. There is no doubt about the facts. On the 14th July, 1914, the plaintiff's predecessor granted a kanom demise to the predecessor of

defendants 1 to 3. The term for the redemption of this kanom expired on 14th July, 1926, but nothing was done and the tenants continued in

possession on the basis of the kanom without the question of renewal being raised. In 1936, after the Malabar Tenancy Act came into force the

jenmi filed a suit for redemption and there was a corresponding application by the tenant for renewal. The Court ordered a renewal, the term of the

order being recited in the deed as follows:

Whereas under the orders of this Court passed on the said petition on 30th

March, 1937, you have duly deposited into Court the sum of Rs. 74-

2-9 made up of the arrears of michavaram and interest inclusive of the renewal fee of Rs. 36-6-5, the properties in the subjoined schedule have

been hereby granted to you on renewed kanom demise in accordance with the provisions of the Malabar Tenancy Act for the prior kanom amount

of Rs. 22-13-9 for the term prescribed u/s 35 of the Tenancy Act.

The tenants appear to have thought that they had got a renewal which would last for a considerable period, whatever the date with effect from

which it operated. But the jenmi in 1939 filed a fresh suit for redemption and as a matter of caution the tenants filed a fresh application for renewal

while contending that the jenmi's suit was premature. The trial Court took the view that the previous renewal granted in 1937 would take effect

from the expiry of the period stipulated in the original kanom, that is to say, 14th July, 1926. In appeal the Subordinate Judge took the view that

the renewal ordered by the Court in 1937 would take effect from the passing of the Malabar Tenancy Act.

2. The jenmi has appealed and for the appellant Mr. Govinda Menon has relied very strongly on the decision of Honwill, J., in Kunhiyoor

Manakkal Tavazhi Karnavan and Manager Neelakandhan Nambudripad Vs. Advocate Mr. C.G. Krishna Aiyar and Another, . The learned

Judge, while noticing that the Tenancy Act contemplates only one renewal fee, felt constrained to hold that the phrase "" date of the termination of

the previous lease, kanom or kuzhikanom,"" in Section 25 (3) must be read as if it were ""the date of the expiry of the period of the previous lease,

kanom or kuzhikanom."" That is to say, it is argued for the appellant that the view taken by the trial Court was right and that the jenmi's suit was not

premature. The draftsmanship of the Malabar Tenancy Act has frequently come up for criticism and it cannot be denied that it contains obscurities.

The definition of a kanom in Section 3 (1),-speaks of the liability of the transferee to pay a renewal fee to the transferor, if the transferee is

permitted to enjoy the said property for a further period after the termination of the original period; that is to say, the word "" period "" is used to

indicate the term of twelve years which is customarily fixed in a kanom document. Section 17 however speaks of the right of the kanomdar to a

renewal on "" the expiry of the kanom under which he holds,"" that is to say, it

seems to treat the expiry of the kanom as the same thing as the expiry of the period fixed in the kanom. When we come to Section 19 we have the phrase "" the year next after the termination of the expiring transaction, while Section 20 reverts to more explicit language and speaks of the period of the verumpattamdar, kuzhikanomdar or kanomdar as having expired and no renewal having been obtained.

3. Then in Section 24 (2) (b) there is a provision for the payment of interest on instalments of renewal fee ordered under the provisions of the Act,

which is payable " on each instalment "" from the date on which it became due or from the date of the commencement of this Act, whichever is

later."" These words were emphasised before Horwill, J., and have been emphasised before us, as indicating that the Act contemplates a renewal

fee becoming due on some date prior to the passing of the Act, which it is argued suggests that the Legislature contemplated an order for

retrospective renewal to take effect from some date anterior to the Act. Then we get to the provisions of Section 25 (3) with which we are mainly

concerned, which provides that a renewal deed executed by the Court under Sub-section (2) shall have the same effect as if it was executed by the

landlord himself, and shall entitle the tenant to enjoy the holding for twelve years "" from the date of the termination of the previous lease, kanom or

kuzhikanom."" The argument for the appellant is that the Act speaks of "" the termination of a kanom ""or "" the termination of a transaction "" or "" the

expiry of the period of the kanom,"" meaning in each case precisely the same thing, namely, the end of the twelve years period ordinarily fixed for

the redemption of a kanom and that this is the meaning of the phrase "" date of the termination of the previous lease, kanom or kuzhikanom,"" in this

sub-section. The argument is fortified by reference to Section 24 (2) (b) as showing that the Act necessarily has reference to a renewal which takes

effect at some point antecedent to the passing of the Act and the argument is that when there is a kanom the period of which expired more than

twelve years before the passing of the Act, although under the judgment of Horwill, J., the Court would order only one renewal fee to be paid, the

renewal would have to take effect from the date of the expiry of the period in the previous kanom and it would be incumbent on the tenant to make

a succession of renewal applications, until these retrospective renewals extend

up to the date with reference to which an effective renewal is

sought. That is to say, we are asked to assume an intention on the part of the Legislature to give to the jenmi a right to claim retrospective renewal

fees once in every twelve years from the end of the period fixed in the last kanom document executed by the parties.

4. It seems to us that this is a very drastic result to be achieved by mere inferences from not very precise language. We are constrained to think

that had the Legislature formulated the intention of giving the jenmi a right to claim a series of renewal fees covering a period during which he took

no action to assert his rights, such an intention would have been expressed in explicit language. We are therefore disposed not to accept this

interpretation of the provisions from Section 25 (3), unless no other interpretation consistent with the language of the Act and not open to similar

objections can be discovered. We can see no logical or legal basis for the view taken by the learned Subordinate Judge that the date of the

termination of the previous kanom must be the date of the commencement of the Tenancy Act. It has been argued by Mr. Ramakrishna Aiyar for

the respondent that the obvious date of the termination of the previous kanom is the date of the renewal itself. The argument may be summarised

thus : Under the customs prevailing in Malabar when a jenmi gives a kanom to his tenant a period of twelve years is fixed for its redemption. But if,

as very frequently happens, neither party wishes to raise the question of the amount of the renewal fee, the value of improvements and the state of

the account between the parties and if the tenancy continues in such circumstances without any renewal, there is no question of the kanom tenure

coming to an end. The kanom remains what it was except that the jenmi has the right at any time to file a suit for redemption or eviction. Until he

does so, the tenant remains a kanomdar holding under the document and the kanom has not expired, though the period for redemption fixed in the

kanom has come to an end. It is argued that reading Section 25 (3) in the light of the ordinary practice in Malabar, the termination of the kanom

would only be by redemption or eviction or by the grant of a renewal and that, there is no basis for reading this phrase to mean anything else. The

difficulty in the way of this view which impressed Horwill, J., in the case already quoted, was how to give some meaning to the provision regarding

interest in Section 24 (2) (b) and how to explain the insertion of this provision that the tenant should enjoy the holding for twelve years from the

date of the termination of the previous document in Section 25 (3), when in the absence of any such words the deed would naturally take effect

from the date on which it was executed. The first of these two difficulties may be got over in one of two ways. It may be possible to read Section

24 (2) (b) as merely intended to indicate that no renewal fee shall be payable before the date of the commencement of the Act, though it must be

admitted that the language used is not very apt for the purpose. Alternatively this provision may be given a meaning by relating it to the lease and

the kuzhikanom which also are subject to renewals. Such tenancies would normally be started by a written contract stipulating for a term. If at the

end of that term the parties continued to pay and receive rents in accordance with the contract without executing any fresh document there would

result a tenancy from year to year which would terminate on notice to quit. Cases might arise in which such a tenancy had been terminated by a

notice to quit before the Act came into force and with reference to which a suit was pending at the time when the Act came into force. To meet

such a case it would be necessary to provide that the renewal would take effect from the termination of the lease, that is to say, the termination of

the tenancy from year to year and in such a case the renewal fee would become payable with effect from some date prior to the commencement of

the Act. It was therefore necessary to provide that interest on the renewal fee would accrue due from the date on which the fee became due or the

date of the commencement of the Act, whichever is later. It seems to us that this explanation gives a sufficient reason for the provision of Section

24 (2) (b) consistent with the view suggested as to the meaning of the words "termination of the previous lease, kanom or kuzhikanom."

5. Similarly it has been contended that the words in Section 25 (3) "from the date of the termination of the previous lease, kanom or kuzhikanom

are not superfluous when it is remembered that there may be a terminated lease in respect of which a notice to quit has been issued which may be

renewed under this Act with effect from the date of the notice to quit. That is to say, we are asked to hold that though the date of the termination of

the previous lease or kuzhikanom may be a different date from the date on which application for renewal is granted, that cannot be so in the case

of a kanom tenure which will continue to subsist until it is put an end to either by eviction or by the grant of a fresh kanom in the shape of a

renewal. It seems to us that this explanation of the words of Section 25 (3) can be accepted without doing violence to the language and without

leading to the anomalous result of requiring the tenant to take out a whole series of retrospective renewals for periods which had expired before the

commencement of the Act.

6. We are therefore of opinion that the words "" from the date of the termination of the previous kanom "" must indicate the date on which a renewal

of that kanom is granted. In this view it follows that the renewal granted by the Court on 18th August, 1937, will enure for twelve years thereafter

and that the present suit and the application are both premature. The second appeal and the civil miscellaneous second appeal are therefore

dismissed with costs.