

(1937) 02 MAD CK 0035
In the Madras High Court

Poovankulathil Thottam Puthiya Purayil Abdullah	APPELLANT
Vs	
Kakkat Valappil Moidin Kutty and Others	RESPONDENT

Date of Decision : 23-02-1937

Acts Referred:

Citation : AIR 1937 Mad 865

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This second appeal arises out of a suit in ejectment to recover possession of the suit land with arrears of rent and future profits from defendant 1 who was in occupation thereof. Defendants 2 to 5 were impleaded in the suit as assignees of defendant 1. The suit property admittedly belonged to a devaswom known as Puthankottan Devaswam. The uraima right was held, according to the findings of both the lower Courts, by four uralans who are the karnavans for the time being of four different tarwads, namely Neelangapurath, Edavan Putta-lath, Erambala and Thiyancheri Kaloth. Defendant 1 occupied the land under a marupat dated 24th June 1912, Ex. A, granted by the uralans Neelangapurath Appa alias Chidan Nambiar and Edavan Puthalath Krishnan Nambiar, the then karnavans of their respective tarwads. It was to run for a period of 12 years and at the end of the term, defendant 1 undertook to surrender possession on payment to him of the kuzhikur value. Four years thereafter the same two uralans executed a kanom kuzhikanom demise in favour of the plaintiff under a deed dated 5th July 1916, Ex. B, for a period of 16 years from the said date with power to recover the rent due from defendant 1 in accordance with the terms of the marupat and also possession of the land at the end of the term. Subsequent to this deed the plaintiff was receiving rent from defendant 1 until 1928. After the expiry of the term fixed in the marupat, the plaintiff demanded possession from defendant 1 and he having declined to do so gave him notice to quit and brought the present suit for possession and profits, past and present.

2. The main defence of defendant 1 was that the kanom deed was invalid and conferred no title on the plaintiff as it was executed only by two uralans without reference to the other uralans and giving them an opportunity of consulting them. He also pleaded non-joinder of the uralans. To satisfy this objection as to non-joinder, Neelangapurath Koman Nambiar and Edavan Puthalath Kunhakutti Nambiar, defendants 6 and 7, were impleaded as party defendants as the then karnavans of their respective tarwads, the previous karnavans and parties to both Exs. A and B having died in the meanwhile. They contended that the kanom demise in favour of the plaintiff was invalid and not binding on the devaswom and further pleaded that it was not executed for a valid necessity of the devaswom and the plaintiff had no right to recover possession of the devaswom property from defendant 1. Both the lower Courts have non-suited the plaintiff on the ground that the plaintiff's title was defective in that the deed in his favour was not executed for or by all the uralans of the devaswom and further that it was not executed for a valid necessity, and also negated the plea of estoppel raised on behalf of the plaintiff which was sought to be invoked against defendant 1 by reason of the payment of rent by him during the currency of the lease.

3. Two questions have been argued by Mr. Nambiar in this second appeal on behalf of the plaintiff: (i) The kanom demise in favour of the plaintiff is valid though it was executed by two uralans because it was subsequently assented to by the Karnavan of Erambala tarwad in 1928 and it does not appear that Thiyancheri Keloth tarwad appeared to have taken part in the management; (ii) Defendant 1 himself having obtained the lease from the two uralans from whom the plaintiff obtained the kanom and subsequently paid rent to him without any protest, is estopped from disputing his title and is bound to surrender possession to him.

4. In regard to the right of trusteeship of the devaswom, it is not open to Mr. Nambiar in second appeal to canvass the finding of fact arrived at by both the lower Courts that it is vested in four uralans being the karnavans for the time being for the four different tarwads already referred to. So this case must be dealt with on the footing that there are four uralans for the devaswom. It is also clear from the evidence that the kanom demise in favour of the plaintiff was executed by the two uralans without reference to the remaining two uralans. The question under such circumstances is, is the kanom valid and does it confer any right on the plaintiff? In the case of private trusts it is the accepted principle of law that the act of the majority of the trustees cannot bind the minority or the trust estate and in order to bind it, the act must be the act of all. Any transfer or alienation of trust property by a majority of the trustees cannot confer any right in the transferee or alienee, even though made in the interests of the trust estate. In Perry "On Trusts" the law is thus stated:

It seems well to note an important difference between cases where a trustee ignored his cotrustee in attempts to dispose of or bind the trust property and

oases where he assumed to act as agent for his co-trustees since the necessary participation of all the trustees may be by agency of one. The attempted disposal in oases of the former kind is entirely nugatory. Thus a lease of trust property signed by only one of two trustees is inoperative and cannot be ratified, since it does not purport to bind the other joint tenant. The same is true of an assignment of a bond and mortgage by less than the whole number of trustees: Vol. 1, p. 661, Section 411, footnote (a).

5. However, an exception is made in the case of public trusts; the act of the majority is held to be the act of the whole number. But as pointed out in *Kumban v. Moorthi* (1911) 34 Mad 406, it does not appear to follow from the exception that they may transact the affairs of the trust without any reference to the minority. The act of the majority can only be held to be binding on the trust if done after giving the minority an opportunity to state their views. Where therefore there could be no majority or the act was done by some of the trustees with out reference to a co-trustee or trustees the act will be invalid. The same principle which applies to the case of a private trust would apply to a disposition or transfer made by such trustees. In *Kumban v. Moorthi* (1911) 34 Mad 406. it was held that a renewal granted by a majority of the uralans of a devaswom was held to be invalid on the ground that the plaintiff who was one of the uralans was not consulted. In the present case only two of the uralans executed the kanom in favour of defendant 1. Even the rule of the majority will not apply: vide *Parambil Parakum v. Narayanan Nambudiri* AIR 1919 Mad 351, where one of the two trustees of a public trust was held incompetent to execute a valid demise when the other co-trustees refused to assent to it. Even assuming that there were only three uralans for the suit devaswom, as the kanom was executed without reference to the third uralan, the kanom must be held to be invalid and subsequent consent or ratification by the third uralan cannot validate that which at its inception is void. The plaintiff cannot therefore be deemed to have acquired a valid right thereunder.

6. The next question is whether defendant 1 is estopped from denying the title of the plaintiff and therefore precluded from resisting the plaintiff's claim for possession. The ground of estoppel is based on the fact that defendant 1 was paying rent from 1916 to 1928, that is, during the period of his lease. It is no doubt the general rule that a tenant is estopped from disputing the title of the landlord from whom he received possession, the principle being that he ought not to be permitted to deny the state of facts which he has agreed and which shall be taken as the basis of the arrangement under which he got possession. This rule is also extended even to cases where the tenant has not been actually let into physical possession but entered into an agreement with the assignee of his original landlord or his legal representative so as to operate as a fresh demise or a fresh taking of the lease; in such cases the tenant is deemed to have got into possession under him but the law has always permitted the tenant to show that the attornment was under a mistake or misrepresentation or in ignorance of the defect in title of such assignee or representative. But in oases where the

facts do not amount to a fresh taking of the lease, and the old lease subsists and payment of rent is made to another in pursuance of the terms of the old lease, to a person who has got authority to collect the rent from the landlord either by virtue of an assignment of the reversion or otherwise, mere payment of rent in such cases will not operate as an estoppel but will only amount to an admission which will be capable of explanation. In the present case, there was no fresh demise. Defendant 1 continued to pay the rent because under the kanom-deed power was given to the plaintiff to collect rent and defendant 1 was given notice of the execution of the said kanom. It does not appear from the evidence that defendant 1 was cognizant of the defect of title of the plaintiff. In such circumstances payment of rent may well have been deemed to be under mistake and in ignorance of the defect of title.

7. This case is in my opinion covered by the decision in *Doe d. Higginbothams v. Barton* (1840) 11 A E 307. In that case one Mathew Morton owned a freehold. He mortgaged it to Thomas Marriott in 1821. In spite of the mortgage Morton was allowed to remain in possession though he had no legal estate. In 1826 Morton let the premises to Barton as tenant from year to year and subsequently in 1829 Morton assigned the premises by way of mortgage to Higginbothams, the lessor of the plaintiff. After the mortgage to Higginbothams, Morton paid rent from time to time to Higginbothams. Higginbothams also demised the rest of the land to one Bullock and realised rent from him. Bullock subsequently underlet the premises to Warburton. In 1835, Woodhead, the assignee of Marriott, the original mortgagee, gave notice to Barton and Warburton to pay him the rents who accordingly paid him thereafter. On demand by Higginbothams, the lessor of the plaintiff, both Barton and Bullock refused to pay the rent; thereupon notices to quit were given to them and a suit in ejectment was filed. The defence was that Morton had no right to execute a mortgage in favour of Higginbothams and the latter acquired no right thereunder and the plaintiff was therefore not entitled to sue in ejectment. The question was whether Barton and Warburton or any of them was estopped from impeaching the title of Higginbothams. Lord Denman, C.J. held that Barton was not estopped though Warburton might be. The following passage in his judgment is instructive:

Barton is precluded from denying that Morton had a title; but he is at liberty to deny that the lessor of the plaintiff ever had any derivative title from Morton, unless the payment of rent concludes him. We do not think that he is so concluded, because, he being tenant to Morton, and having notice of a subsequent mortgage by Morton to the lessor of the plaintiff, had no right to question it, nor, until he received notice from Woodhead or the prior mortgagee, had he any reason to doubt that the legal estate had passed to the lessor of the plaintiff. He may truly be said to have paid the rent under a mistake; and then he may show, not that Morton had not a title by which he, Barton, would be estopped as against Morton himself, but that Morton's title was not such a one as would enable him to pass a legal estate to the lessor of the plaintiff. . . . And this we think he was at liberty to show, though, if there had been a demise in the

declaration by Morton himself, it might have been otherwise As to Warburton, he is bound to admit that the lessor of the plaintiff had a title when he (Warburton) was let into possession. In truth, the lessor of the plaintiff was mortgagor in possession (for he can be in no better situation than Morton).

8. It will be seen from this case that the rent was paid by Morton to Higginbothams because he received notice of the subsequent mortgage in favour of Higginbothams from Morton. In this case defendant 1 paid rent to the plaintiff because he had notice of the kanom. It may be that the plaintiff could not have denied their title as Denman, C.J. pointed out in the case of Barton if the uralans had sued, but it does not preclude defendant 1 from showing that the two uralans could not confer a valid title on him under the said kanom. Further, in this case the lease had expired. The original uralans are dead. The question is in whom the reversion vested. It had been established in this case that the reversion is in the devaswom and not in the plaintiff and under such circumstances the lease having expired and the two uralans who gave him the lease being dead, it is open to defendant 1 to show that the title of the uralans under whom he got possession expired, and the persons in whom the title now vests were the persons to whom he should deliver possession.

9. Mr. Nambiar relied very strongly on *Doe d. Marlow v. Wiggins* (1843) 114 ER 937. In that case the tenant was holding the land under one Samuel Simpson. Pending the tenancy, Simpson died leaving the premises to Marlow. Marlow gave Thompson notice to quit which would have expired in 1840. Subsequent to the notice to quit and before the actual expiry of the term the tenant agreed to take of William Marlow the same land from the expiry of the term on a certain rental until March 1841, and surrender possession thereafter. It was held under such circumstances that the tenant was estopped from disputing the title of Marlow. The ground of the decision was that there was a fresh demise and the legal effect of the arrangement was that he became a tenant of Marlow from the expiry of the term. Mr. Nambiar also relied on the Full Bench decision in *Venkata Chetty v, Aiyanna Goundan* AIR 1917 Mad 789. It will be seen from that case that the tenant executed the lease in favour of his landlord's vendee and it was considered to be a fresh taking under him. Even then it was held that he was only estopped from denying his title in the absence of proof that he executed the lease in ignorance of the defect in his lessor's title. Phillips, J. at p. 578 points out the distinction between a case where there is an agreement between a tenant and a landlord which constitutes a new tenancy and a case where a tenant holds under his old lease and merely continues payment of rent in accordance with the claim put forward by the assignee of the landlord under whom he came into possession. In the present case, as has been already pointed out, the tenant was holding under the old lease and was merely continuing payment of rent in ignorance of the fact that the two uralans were not competent to execute the kanom in question.

10. Mr. Nambiar contended that inasmuch as defendant 1 claimed under the

same uralans from whom the plaintiff got the kanom, it ought not to lie in the mouth of defendant 1 to impeach their title, but it will be seen that defendant 1 was not impeaching the title of his landlords, but his plea is the landlords had no title to grant the kanom in question to him on the date on which they purported to do so. The lease in favour of defendant 1 is not in question. It may be that the said lease might have been granted by the said uralans in consultation with the other uralans and be a valid lease binding the devaswom though the kanom cannot be. In *Doe d. Oliver v. Powell and Pyne* (1834) 1 Ad E 531 a similar question arose. A company owned certain premises and they sold it to one Pope in 1818. He became bankrupt and the assignee in bankruptcy sold it to Oliver. The defendants claimed it under a conveyance in 1824 from the same company. In a suit in ejectment against the defendants, the defendant sought to let in evidence to show that, at the time of the conveyance of 1818, there was an outstanding legal estate in a trustee for the company and therefore the company had no legal estate to convey to Pope. The trial Judge refused to admit the evidence on the ground that it was not open to the defendants to impeach the title of the company under whom they claimed. The judgment of the trial Court was reversed by a strong Court of Appeal presided by Lord Denman, C.J. They observe thus:

The evidence ought to have been admitted. The outstanding term might have been called in between 1818 and 1824, so that the company might have had a good title at the latter time, and a bad one at the former.

11. I would apply the principle of the said decision and overrule the contention of Mr. Nambiar. The contention of estoppel therefore is not sustainable. The decision of the lower Court is correct. In the result, the second appeal fails and is dismissed with costs of 4th and 8th respondents--one set. (Leave to appeal refused).