

**(1952) 11 KL CK 0006**

**In the High Court Of Kerala**

**Case No :** S.A. No's. 154 of 1123 and 16, 33 and 34 and C.R.P. No. 53 of 1124

Poulo Kunhi Cheriyaathu

APPELLANT

Vs

Parameswaran Namboodiripad

RESPONDENT

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**Date of Decision :** 19-11-1952

**Acts Referred:**

Jenmi and Kudiyan Act, 1071 — Section 15, 15(2), 7

**Citation :** AIR 1952 Ker 338

**Hon'ble Judges :** V.S. Subramanya Iyer, J;K. Sankaran, J;G. Kumara Pillai, J

**Bench :** Full Bench

**Advocate :** K.P. Abraham, in S.A. No. 154 of 1123, K.K. Mathew, in SA No. 16 of 1124 and G. Rama Iyer, in SA Nos. 33 and 34 of 1124 and CRP No. 53 of 1124, for the Appellant; P. Narayana Pillai in S.A. No. 154 of 1123, K.K. Mathew in SA No. 34 of 1124 and George Vadakayil in CRP No. 53 of 1124, for the Respondent

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## **Judgement**

Govinda Pillai, J.—All these cases relate to the Jenmikaram settled under the Jenmi and Kudiyan Act 5 of 1071 as amended by Act 12 of 1108. Though the parties are different there is one important common question arising in these suits. In fixing the michavaram due to the Jenmi in the Kanom documents involved in the case and also decree of court, the michavaram is directed to be paid according to the Jenmi's Para. The Jenmi's Para is described with reference to the Agrasala Para and so the question that arises in all these cases relates to the capacity of the Agrasala Para. The Jenmi contended that the cubic contents of the Agrasala Para, and of the standard Para - the capacity of which is 800 cubic inches - are the same; while the tenants contended that the capacity of the Agrasala Para is only 640 cubic inches.

We have therefore to decide whether the capacity of the Agrasala Para and of the Standard Para is the same or different, and, if different what is the capacity of the Agrasala Para. In none of the Statutes of the Travancore area we find a definition of the Agrasala Para. According to the Weights and Measures Act 6 of 1085, the primary standard for measures of capacity was to be called an

"Edangali" and it was to be a measure of metal certified to be capable of holding 80 cubic inches of water. Ten such Edangalies make one Standard Para; so that the capacity of the standard Para is 800 cubic inches. At the time when the Revenue Settlement Proclamation was passed by His Highness the Maharaja of Travancore, under date the 14th Kumbhom 1081 corresponding to the 24-2-1886, it was directed in Section 15 thus:

As in the case of land measure, so in that of the grain measure - also designated Para - there is at present no uniform standard, the Para varying in different localities. As it is desirable to have a fixed uniform measure throughout the State, we have sanctioned an Edangali of 80 cubic inches being adopted as the standard measure for the future, in supersession of the numerous varying measures now in use throughout the State.

Though this finds a place in the Revenue Settlement Proclamation, it was not confined in its operation to the proceedings conducted under the proclamation. It had been adopted as a stand measure thereafter. At that time there were the "Chalamudra Para", "Agrasala Para" and the "Azhuvan Para". This Azhuvan Para was much lower in capacity than the other two paras which were in use at that time. It was necessary therefore to prescribe a standard measure and the necessity was all the more keenly felt because the Pattom from each paddy land had to be fixed and the tax due to Government had to be ascertained with reference to the Pattom thus fixed. The Pattom then fixed was adopted as the basis for the calculation of certain dues under the Jenmi and Kudiyan Amending Act of 1108. Thus the grain measure described in Section 15 of the Proclamation was intended to be for the general use of the State. It was this measure that was adopted in the Weights and Measures Act.

While the Revenue Settlement Proclamation was in force the Jenmi and Kudiyan Act 5 of 1071, giving permanency of occupation of the holding to the tenant, was passed. Thereafter the right of the tenant, called the Kudiyan, in his holding was sanctioned to be heritable and transferable. No Kudiyan was to be evicted from his holding or any part of his holding except in execution of a decree for such eviction except under the conditions laid down in Section 7. The relationship between the Jenmi and the Kudiyan was to be evidenced by a Kanapattom deed to be executed by the Jenmi to the Kudiyan and an Ethir Kanapattom by the Kudiyan to the Jenmi. The particulars of the "Kanapattom" contract were to be as laid down in Section 15 of the Act; and in Sub-Section 2 of that section, it is stated that if the Michavaram or other dues are made payable in kind, it shall be specified according to the measure or Para prescribed by the Government or which may be agreed upon between the parties and that if any local Para or measure is used by the parties, the difference between it and the Government standard Para must be set forth in the Kanapattom.

By Sub-clause 8 the registering officers were directed to refuse to accept for registration any Kanapattom instrument unless it contained the particulars set forth in the preceding clauses. These directions had evidently kept in view the

standard measure prescribed in the Revenue Settlement Proclamation of 1061. In the Kanapattom deeds executed subsequently, the standard Para Sirkar Mudra Para came to be interpreted by the parties differently. Some referred to the Jenmi's Para and gave the capacity in terms of the Clialamudra Para, while Ors. did so in terms of the Agrasala Para. The Director of Registration therefore sent a communication to the Government to specify by a notification the Sirkar Mudra Para referred to in the second clause of Section 15 of the Jenmi and Kudiyan Act.

The decision then taken by Government on 14th Edavam 1072 was that the "Sirkar Mudra Para" or the standard Para mentioned in the Jenmi and Kudiyan Act was the same as the Agrasala Para. This decision was notified in the Travancore Government Gazette dated the 20th Edavam 1072 at page 792. Thus, after that date, if the Jenmi and Kudiyan described the Jenmi's Para with reference to the Agrasala Para or if the Jenmi and the Kudiyan conducted themselves in the payment of the Michavaram on the above basis, it was all along understood that Agrasala Para and standard Para had the same capacity. There was no room for any doubt, at least after 1072, with regard to the capacity of Agrasala Para. It was understood and acted upon as if such capacity was 800 cubic inches. At any rate, that was how the parties who paid the Michavaram, and the Jenmi who received the same, conducted themselves.

2. The first case that came up before the High Court relating to this matter was S.A. 159 of 1100 (A). Copy of that judgment is Ext G in S.A. 33 of 1124 and Ext. H in S.A. 154 of 1123. There, the Kudiyan contended that the capacity of an Agrasala Edangali was only 64 cubic inches. This argument advanced was based on certain remarks made by the late Mr. Ramchandra Rao in the course of his enquiry into the Devaswom affairs. Though that report was not available to their Lordships then, we find the same as Appendix II in the valuable book "Devaswoms in Travancore" published by the Devaswom Board. At page 376 of that book appears Mr. Ramachandra Rao's remarks relating to the Agrasala Para. He stated that the Para formerly in use in almost all pagodas from ancient times was the "Chandra Para" which might be taken to be equal to the Agrasala Para, that about the year 1065, the Agrasala measure of 640 cubic inches was displaced by the settlement para of 800 c. inches in several institutions, and that the capacity of the Agrasala Para was 640 cubic inches.

Further down he had stated that he had compared the Agrasala Para, which he obtained from the Trivandrum Second Tahsildar with the settlement Para in a few pagodas, that he found 100 paras of rice according to the settlement measure to be equal to 104 Paras and 8 3/4 Edangalies according to the Agrasala measure and that in the case of some pagodas the difference appeared to be as high as 9 Paras and 3 3/4 Edangalies of Agrasala measure. This is his observation relating to this matter. If the capacity of Agrasala Para is 640 cubic inches and that of the standard Para 800 cubic inches, then 100 Paras of rice according to the standard Para should have measured 125 Paras according to the Agrasala Para. The difference could not therefore have been 4 or 9 Paras as noticed by him in his

report. The Agrasala, Para which he got therefore was approximate to the standard measure used in several of the pagodas. There was no critical study of the capacity of the two kinds of Paras in his report, and so no help is derived by that report, which is now available for us for reference.

In the judgment in S.A. 159 of 1100, (A) their Lordships further mentioned that the opinion of Mr. Ramachandra Rao was the result of the observation confined to facts relating to certain Devaswoms. That appears to be the correct position. Their Lordships then laid down after a careful consideration of the question involved and arrived at the conclusion that the standard measure was identical with the Agrasala measure and that such measure was an Edangali with a capacity of 80 cubic inches of water. This is in accordance with the provision in the Revenue Settlement Proclamation, Jenmi and Kudiyan Act, and the Government Notification of 1072.

We have not been referred to any other Government Notification or order where the capacity of Agrasala Para was mentioned to be 640 cubic inches, until we come to a letter of 29th Meenam 1110 corresponding to 11th April 1935 from the Chief Secretary to Government to the Land Revenue and Income Tax Commissioner, laying down, that for all purposes of measurement, the Agrasala Para may be treated as having the capacity of 640 cubic inches, that the Agrasala Para should be taken as equal to 640 cubic inches with reference to Jenmi Karam Settlement cases and that in respect of cases already disposed of in the settlement of Jenmi Karam the Agrasala Para should be taken an equivalent to 640 cubic inches only when the question is raised for decision in revision or appeal cases.

This was the view expressed, adopting the opinion of the Additional Head Sirkar Vakil to whom the question was apparently referred. This letter is seen published at pages 152 and 153 of the fourth supplement to the Travancore Land Revenue Manual Vol. II. It would appear, that the matter was again referred to the Additional Head Sirkar Vakil and he sent his views in the matter on 29th December 1935 sticking to the earlier views expressed by him and referred to already. In this note of the Additional Head Sirkar Vakil, his attempt was to criticise some of the decisions of the High Court, which according to him, might not have been correct in their interpretation of the measure Agrasala Para. Though he had referred to the Government notification of 1072 (vide page 439 of the Travancore Acts and Proclamations, Vol. II), he attempted to brush it aside with the observation that the notification does not say what the capacity of the Para is nor does it suggest that the Agrasala Para should be treated as equivalent to the Para measure intended by the Settlement Proclamation. This was nothing but a twist of the words and the ideas contained in the Notification of 1072.

In 1072 so far as the State Government was concerned, there was only one standard measure and that standard measure was the Edangali with a capacity of 80 cubic inches. We do not wish further to comment on the views expressed by the learned Sirkar Vakil or to his remarks which we think are entirely

unjustified regarding the decisions of the High Court. We therefore ignore that communication and the Government letter based thereon to the Land Revenue and income tax Commissioner. This letter and the Sirkar Vakil's views are seen printed at pages 287 to 294 of the Supplement mentioned above.

4. In Anr. case - "Kunjaikan v. Govinda Panicker" 32 Trav L. J. 355 (B), decided on 17-2-1942, it had been held by a Division Bench that the Kulasekharamangalam Para is equal in capacity to Agrasala Para and that according to the Government Notification of 1072 the Agrasala measure is equivalent in capacity to the standard Para as contemplated in Section 15 of the Jenmi and Kudiyan Act of 1071. Two other decisions of the High Court were brought to our notice. The first was the decision of a single Judge in Civil Proceedings No. 1916 of 1120 (C) where it was held that the capacity of an Agrasala Para is 640 cubic centimetres. Evidently the learned Judge meant by cubic centimetres cubic inches. That order was passed on the concession made by the opposite side and not with reference to the relevant statutory provisions which we have referred to above. The other decision is by a Division Bench in A.S. 253, 467 and 419 of 1118 (D) where the capacity of Agrasala Para is held to be 640 cubic inches. This case was decided mainly on the two communications of Government published at pages 152 and 287 of the fourth supplement already referred to.

These Government communications cannot disturb the vested rights of parties who acted on an earlier notification at least for 40 years. We ignore these two notifications and overrule the two decisions which held that the capacity of the Agrasala Para is 640 cubic inches. The decision in S.A. 159 of 1100 (A) and -"32 Tra LJ 355 (B)" are accepted for they are based on the Government Notification of 1072 explaining the settlement measure referred to in Section 15 of the Jenmi and Kudiyan Act passed in the previous year. We therefore lay down that the capacity of the Agrasala Para when it is issued with reference to the Jenmi and Kudiyan Act 5 of 1071 as amended by Act 12 of 1108 is 800 cubic inches of water.