
(1936) 09 MAD CK 0021
In the Madras High Court

Puliyeri Kunhakuttan alias Kelu

APPELLANT

Vs

Imbichikuttan alias Imbichikunhan and Others

RESPONDENT

Date of Decision : 04-09-1936

Acts Referred:

Citation : (1937) ILR (Mad) 353 : 165 Ind. Cas. 963 : (1936) 44 LW 803 :
(1936) 71 MLJ 727

Judgement

1. This is an appeal against the judgment of Varadachariar, J., in Second Appeal No. 3 of 1931. The facts are all set out in the first paragraph of

that judgment and it is unnecessary to repeat them. The only question for decision is whether Ex. Ill, a renewal of the kanom demise Ex. A, four

years before the expiry of the period under the latter, but to take effect on the date of the renewal itself, executed by a predecessor of the fourth

defendant, who was the then stanom holder to the father of defendants 1 and 2, in respect of properties appertaining to the stanom, is valid and

binding on the stanom, in the absence of proof of a valid necessity for such a renewal. Our learned brother, preferring to follow the trend of recent

decisions of this Court, the last of which is C.M.A. No. 406 of 1928, to that reported in Vataavatta Nair v. Kenath Puthen Vittil Kuppassan Menon

(1918) 36 M.L.J. 630, held that it was valid. Mr. K.P. Ramakrishna Aiyar for the appellant, relying on the decision in Vataavatta Nair v. Kenath

Puthen Vittil Kuppassan Menon (1918) 36 M.L.J. 630, contends that considerations which arise in deciding the question of the validity of such

renewals are the same whether such renewal is to take effect at once or on the expiry of the period under the prior demise. In this we are unable to

agree with him. This question was gone into elaborately by the learned Judges who decided C.M.A. No. 406 of 1928 and they came to the

conclusion that the two sets of cases are governed by entirely different considerations. As we agree with the conclusion arrived at in that case and generally with the reasons, it is unnecessary to enter into a lengthy discussion here. In the case of a renewal to take effect at once, there is an implied surrender and a grant of a fresh demise. It is certainly open to a tenant, a kanomdar, to surrender the unexpired portion of his term. The landlord or the stanom holder is no doubt not bound to accept such a surrender. But there is nothing in law to prevent him from accepting it, provided of course there is no fraud or other circumstances vitiating the transaction. Once the surrender is accepted, the stanom holder has, in the ordinary course of management of stanom properties, the right to lease the property for the customary period or demise it on nominal kanom for the usual period of twelve years, provided the terms of such leases or kanom demises are not onerous or otherwise to the detriment of the stanom.

It is immaterial whether the new demise is granted to the same person or a stranger or whether it is granted the same day or a few days or months hence. In this case the amount of kanom in Ex. III is the same as in Ex. A and is only nominal, being only Rs. 10 and the rent reserved in the renewed demise is the same as in Ex. A. The renewal cannot therefore be said to be less beneficial to the stanom. But Mr. K.P. Ramakrishna Aiyar contends that, as the income from the stanom properties including the renewal fees is the absolute property of the stanom holder for the time being, the grant of renewal by one stanom holder before the expiry of the term under the prior demise would be prejudicial to the person who will happen to be the holder of the stanom at the time the prior period expires, inasmuch as he will be deprived of the renewal fees and that the principle of the decision in C.M.A. No. 406 of 1928 does not apply to dealings in respect of stanom properties by a stanom holder. But once it is granted that it is within the ordinary powers of management for a stanom holder to grant leases for twelve years and to demise on nominal kanom for twelve years and not merely to enure during the lifetime of the stanom holder, this argument loses all its force, and it is not disputed before us that he has such powers. There is no reason, therefore, for not applying the principle of the decision in C.M.A. No. 406 of 1928, to cases of renewals by stanom holders of demises in respect of stanom properties as well, which take effect from the dates of such renewals. The

appeal is therefore dismissed with costs.