
(1903) 03 MAD CK 0020
In the Madras High Court
Case No : Second Appeal No. 1007 of 1901

Raman Nair

APPELLANT

Vs

Vasudevan Namboodripad and Another

RESPONDENT

Date of Decision : 05-03-1903

Acts Referred:

Transfer of Property Act, 1882 — Section 98

Citation : (1903) 03 MAD CK 0020

Hon'ble Judges : Boddam, J; Bhashyam Ayyangar, J

Bench : Division Bench

Advocate : C. Sankaran Nayar, for the Appellant; P.R. Sundara Ayyar, for the Respondent

Final Decision : Allowed

Judgement

1. This is a suit to redeem a kanom granted for a term of 59 years, the amount of the kanom being Rs. 500. The kanomdar is to enjoy a portion of the produce for interest on the kanom and annually pay the balance of produce which is fixed at 4 paras to the mortgagor the jenmi. In our opinion this is an anomalous mortgage under the Transfer of Property Act and not a lease and, even assuming that the mortgagor's title was disclaimed by the mortgagee, such disclaimer would not entail a forfeiture so as to entitle the mortgagor to sue for redemption of the mortgage before the expiration of the 59 years. The decisions cited for the Respondent were all cases in which it was held that the customary period of 12 years, for which period a kanom runs in Malabar in the absence of any period being fixed in the deed, cannot be availed of by a mortgagee who has disclaimed the mortgagor's title or committed any waste, and no case has been cited in which it has been held that according to the local usage

(Section 98, Transfer of Property Act) in Malabar a mortgagee for a contractual term of years forfeits the term contracted for by denying the

mortgagor's title. On this ground we hold that the suit is premature and it is unnecessary to consider or decide in this case when there was any real

disclaimer of the landlord's title by the karnavan and, if so, whether such disclaimer would work a forfeiture against all the members of the tarwad.

2. We must allow the appeal and reverse the decrees of the Courts below so far as they award redemption but affirm them in so far as they award

arrears of purapad due till date of suit, viz., Rupees 17-9-0.

3. Each party will bear and pay their own costs throughout.