

(1891) 10 MAD CK 0017
In the Madras High Court

Ramunni and Others

APPELLANT

Vs

Kerala Varma Valia Raja and Others

RESPONDENT

Date of Decision : 19-10-1891

Acts Referred:

Citation : (1892) ILR (Mad) 166

Hon'ble Judges : Shephard, J; Arthur J.H. Collins, J

Bench : Division Bench

Judgement

1. It is quite clear that the perpetual lease given by the plaintiff's predecessor in title in 1861 was a disposition of an improvident character which could not bind his successors.

2. It is argued that by reason of the acceptance of this lease there was a surrender of the prior lease of 1846 and that therefore the suit was barred

by limitation. In our judgment, however, any surrender by operation of law that might have ensued on the taking of the perpetual lease was nullified

by the plaintiff's repudiation of the perpetual lease. The surrender must fall to the ground with the transaction on which it is supported. Doe

Egremont v. Courtenay 11 Q.B. 702 It is contended by the Acting Advocate-General that this principle is not applicable, because the plaintiff's

right to challenge the lease of 1861 was extinguished by the law of limitation more than 12 years having elapsed since the date when the

defendants' possession under it began. The case is compared with Madhava v. Narayana ILR 9 Mad. 244 In that case it was held that possession

acquired under a kanom, granted by the manager of a Nambudri family, and extending over more than 12 years, gave the holder a prescriptive title

against the successor in management, who otherwise would have been entitled

to repudiate the kanom and recover immediate possession.

3. It is clear that in such a case where the only legal title to which the defendants' possession could be referred was repudiated by the plaintiff, the

possession must have been adverse to the family. But in the present case it is otherwise, because apart from the perpetual lease which the plaintiff

treats as non-existent the defendants had a right to possession under the prior lease which had never been determined.

4. The plaintiff was never in a position to recover immediate possession from the defendant as from a trespasser. It was not competent to him at

one and the same time to repudiate the perpetual lease and to take advantage of it by claiming that it operated to effect a surrender of the prior

lease.

5. Under these circumstances, it is clear that the possession of the defendant cannot be deemed adverse and that the suit is not barred by limitation.

6. The appeal is therefore dismissed with costs.