
(1915) 03 MAD CK 0089
In the Madras High Court

Sankaran Nair

APPELLANT

Vs

K.K. Kochappu Menon and Others

RESPONDENT

Date of Decision : 29-03-1915

Acts Referred:

Citation : AIR 1916 Mad 1099 : 29 Ind. Cas. 427

Hon'ble Judges : Seshagiri Aiyar, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. The lower Appellate Court says in paragraph 12 of its judgment that under Exhibit I, Chathunni's right was coupled with an obligation to perform certain services. But we do not find in Exhibit I, which was produced in a mutilated condition, any such obligation imposed. In Exhibit B produced by the 5th defendant, as a copy of Exhibit I in its un mutilated state, such a condition appears, but the District Munsif has given prima facie good grounds for treating it with suspicion. The Subordinate Judge has not referred to Exhibit B at all.

2. Before disposing of this second appeal, we think it necessary to obtain definite findings from the lower Appellate Court on the following issues :

3. 1. Is Exhibit B a true copy of the original deed, Exhibit I, in its un mutilated condition P Were any conditions attached to the anubhavam grant made under Exhibit I? (In coming to a conclusion on this question, the lower Appellate Court will also consider whether there is any explanation for the use of the word adima in the course of the recitals in Exhibits II and XI).

4. 2. Was any rent paid or service rendered to the 5th defendant's family by the original grantees and their descendants and their alienees at anytime after date of Exhibit II, and when were such services or payments of rent discontinued? (This issue will arise only if on the 1st issue, it is decided that there were such services to be rendered or rent payable).

5. Fresh evidence may be adduced on both sides except as regards the genuineness of Exhibit B. The findings should be submitted within four months

from date of receipt of records by the lower Appellate Court and ten days will be allowed for filing objections.

6. In compliance with the above order the Subordinate Judge of South Malabar at Calicut submitted the following.

7. Findings.--I have been directed by the High Court to submit findings on the following issues:

8. "1. Is Exhibit B a true copy of the original deed, Exhibit I, in its unmutilated condition : were any conditions attached to the anubhavam grant made under Exhibit I?.

2. Was any rent paid or service rendered to the 5th defendant's family by the original grantees and their descendants and their alienees at any time after date of Exhibit II, and when were such services or payments of rent discontinued?

9. 5. According to the plaintiff, the conditions were payment of 1 fanam and 1 bunch of plantains in the shape of rent, and the rendering of some service on occasions of marriages and deaths in the grantor's family. There is 110 evidence that any service was at any time rendered. As to the payment, there is the evidence of the 1st defendant (plaintiff's 1st witness), and of the 5th defendant (defendants' 3rd witness). The former states that he and liis father paid rent up to 1067. This statement, which was made in examina-tion-in-chief, was withdrawn by him in cross-examination as being incorrect. The 5th defendant speaks to having received rent from the 2nd defendant from 1067 up to 1075. This is denied by the 2nd defendant. In these circumstances the evidence of the 1st defendant and the 5th defendant, cannot be considered to be trustworthy. I find the 2nd issue in the negative.

10. This second appeal coining on this day for final hearing on receipt of the findings of the lower Appellate Court upon the issues referred by this Court for trial, the Court delivered the following.

11. We accept the findings of the learned Subordinate Judge.

12. As the Munsif points out (and it was in fact admitted before him), this suit is based solely on the alleged forfeiture of the defendant's tenancy on account of his denial of the landlord's title.

13. Following Thikkillath Tarawad Karnavan v. Vadakka Chattibikath Manchu Nair 27 Ind. Cas. 863 : 2 L.W. 102 and Abbakka Shetthi v. Seshamma 25 Ind. Cas 944 : 16 M.L.T. 442 : (1914) M.W.N. 915 we hold that the acts of the 3rd defendant relied on in the plaint have not worked a forfeiture of the tenancy as alleged.

14. The lower Appellate Court's decree is set aside and that of the Munsif restored with costs in all Courts on plaintiff.