
(1951) 04 MAD CK 0022

In the Madras High Court

Case No : A.A.O. No"s. 149 and 150 of 1949

Tavanur Manakkal Raman Nambudiri

APPELLANT

Vs

Chennai Veettil Karthiya and Another

RESPONDENT

Date of Decision : 18-04-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Transfer of Property Act, 1882 — Section 58

Citation : AIR 1952 Mad 176 : (1951) 64 LW 1063 : (1951) 2 MLJ 527

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : D.A. Krishna Wariar, for the Appellant; N. Sundara Iyer, for the Respondent

Final Decision : Allowed

Judgement

Raghava Rao, J.—These two appeals which are against orders of remand raise a common question for determination, and that is the

construction of a certain document, Ex. A. 1, a panayam kychit, as it is called, dated 25th May 1923. The suit out of which these appeals arise

was one for redemption on the footing that the document constituted a usufructuary mortgage. It was resisted by the defendants on the ground that

the transaction was in the nature of a kanam. The suit was decreed by the trial Court but dismissed on appeal with the result that an application for

renewal of the kanam which had been rejected by the trial Court was ordered by the lower appellate Court.

2. There has been much argument advanced on both sides on this question of the construction of the document, but I think that if certain broad

considerations of perspective are borne in mind the construction is not by any means one of difficulty.

3. That there was a prior kanam on the expiry of which the suit document came into existence is not disputed. That an amount of Rs. 250 was fixed by the parties as purapad payable on the date of the execution of the document in question and was in fact so paid is also common ground.

Laying down for his guidance two basic principles (1) that it is more the substance of a transaction than its name that has to be looked into for the purpose of ascertaining the true nature of the transaction, and (2) that where the parties to a transaction with full knowledge of its legal implications have chosen to give a particular name to the transaction which is known to law, and the document evidencing the terms of the bargain makes It clear that the intention of the parties was to enter into such a transaction as is named by them, the Court is bound to give effect to the plain terms and tenor of the document, unless it is shown that the terms of the bargain are repugnant to the character of the transaction as intended by the parties, the learned District Munsiff came to the conclusion that the document in question in the present case was in the nature of a possessory mortgage. The learned Subordinate Judge on appeal reversed him essentially under the influence of the impression, which is not warranted by the document itself, that although the parties intended a kanam they wanted to make it appear that it was a mortgage and that way ""to anticipate a passing of any tenancy legislation giving protection to kanomdars."" I should ordinarily be loth to interfere on a question of construction with the view of the lower appellate Court in any case, but where the Courts below have differed, the question which I generally propound to myself, is whether the lower appellate Court had sufficient reason in law which compelled it to differ from the trial Court on the construction which the latter had placed upon the document. Applying this point of view to the present case, I have, after a careful and anxious consideration of the arguments of counsel on both sides, arrived at the distinct conclusion that the trial Court in the present case approached the matter from the right perspective and decided the case aright, whereas the lower appellate Court without sufficient warrant interfered with the conclusion arrived at by the trial Court. It follows in my opinion that the order of the lower appellate Court in the present case must be set aside and the decree and order of the trial Court should be restored.

4. Looking at the definition of "kanam" in the Malabar Tenancy Act (Section 3 (1), it is common ground that the first four conditions stand satisfied, namely, a right in the transferee to hold the property liable for the consideration, (2) the liability of the transferor to pay to the transferee interest on the consideration, (3) the payment of michavaram by the transferee and (4) the right of the transferee to enjoy the property for the period provided for. As regards the fifth condition of the definition It is argued by Mr. Krishna Wariar that it does not exist in the present case, because on the report of the Commissioner both the Courts have concurred in holding that the renewal fee payable is nil. Mr. Sundara Aiyar has, on the other hand, contended contra relying upon a case in Kannathazha Pakran and Others Vs. Puthalath Amina Umma and Another, . In that case in a transfer described as kanom the transferee was permitted to enjoy the property for a further period after the termination of the original period. The renewal fee calculated according to the provisions of the Act amounted to nothing. The transferee contended that he was not liable to pay any renewal fee at all and that consequently there was no kanom. It was held by Burn, J., that the contention was wrong, because, as the learned Judge put it, it confused the question of the liability of the transferee to pay renewal fee with the question of the amount of renewal fee. The liability to pay renewal fee being still there, the kanam was, according to the learned Judge, still a kanom. It is not necessary for me to go into the relative merits of the contention of counsel on either side on this aspect of the matter, because I am clear that the document in the present case does not provide for the liability of the transferee to pay any renewal fee to the transferor, if the transferee is permitted to enjoy the property in question for a further period after the termination of the original period. Mr. Sundara Aiyar contends that if the character of the document as a kanom is otherwise established, the liability to pay a renewal fee follows as a matter of course as one of the Incidents which in law attaches to the transaction. That is true, but in order to know whether the transaction amounts to a kanam or not, it is not improper to see whether the document provides for liability to pay a renewal fee. The document in the present case does not provide for it, nor does it go under the label of kanom, as the document in the case in Kannathazha Pakran and Others Vs. Puthalath Amina Umma and Another, did.

5. The name ""panayam kychit"" is, as Subba Rao, J., has observed in "C. R. P. No. 1253 of 1948", a very well-known word in Malabar, and

where that is used, there is no reason to suppose that a mortgage is not what was intended by the parties but a kanam. If really the parties intended

a kanom there was no difficulty in the way of their use of that word. That the parties in the present case have not used that word but have used

altogether & different word is a point of considerable significance, in my opinion, which the lower appellate Court has altogether missed. It is

argued by Mr. Bundara Aiyar that the name is not all that matters, but that the substance of the transaction must be looked into. That is true; but

where the substance of the transaction is not by any means a thing susceptible of easy definition on the provisions of the document the significance

to be attached to the name still remains, as I think.

6. It was argued by Mr. Sundara Aiyar that the payment of Rs. 250 by his client to the appellant on the date of the execution of the earlier

document was itself in the nature of a renewal fee for the prior kanom transaction, and that if the possession of his client under that transaction

continued under the present document his status as a kanamdhar must be deemed to be continuing. That the Rs. 250 was paid as a renewal fee is

not made out by the document itself but by an account book, the genuineness of which is not however by any means open to doubt. The word

avakasam"" however which is to be found used in the account book does not necessarily show that it was by way of renewal fee of a kanom as

such that the amount was paid. As Mr. Krishna Wariar, in my opinion, rightly points out, instead of the generic word ""avakasam"" it was open to

the parties if they meant renewal fee for a kanom as such to have used the specific expression ""poliche eduthuka avakasam."" "Avakasam", the

generic word, may have been used, as I think, because while no doubt the possession already obtaining under the prior kanam was intended to

continue it was not intended that it should continue as possession under a continuing kanam but only as possession under a panayam kychit which

the parties entered into in place of the old kanam transaction. The avakasam of Rs. 260 may have been for the continuance of possession under

the new document though on a different jural basis to that of possession under the earlier kanam transaction. It is also said by Mr. Sundara Aiyar

that the fact that his client had to bear the stamp and registration expenses would go to show that the transaction in question was a kanam rather

than a mortgage. I do not consider this circumstance to be by any means conclusive. On the whole the question is one of inference from all the

relevant facts put together, and while no doubt there is some force in what the learned counsel is saying I have on the whole no doubt in my mind

but that the judgment of the learned District Munsiff alike with reference to perspective and with reference to considerations of detail is so clearly

correct that it ought not to have been touched by the lower appellate Court in the slightest.

7. In these circumstances these appeals must be allowed with costs here and in the lower appellate Court (Advocate's fee In A.A.O. No. 149 of

1949 only.)