
(1926) 11 MAD CK 0068
In the Madras High Court

(Thayingoli) Valiya Kalyamni

APPELLANT

Vs

(Vayaredathil Parkum Thayingoli) Krishna Nambiar and
Others

RESPONDENT

Date of Decision : 18-11-1926

Acts Referred:

Registration Act, 1908 — Section 50
Specific Relief Act, 1877 — Section 2

Citation : AIR 1927 Mad 699

Judgement

1. The facts out of which this second appeal arises may be shortly stated as follows:

2. The second defendant is the jenmi of the suit land. The 1st defendant has been holding it under a kanom dated 28th January 1909 (Ex. I) for 12 years. On the 5th January 1919 the 2nd defendant executed a melcharath in favour of the plaintiff, Ex. A, and the present suit is filed on its basis for redemption of the kanom. The 1st defendant pleaded that there is an agreement between him and the jenmi for a renewal of the kanom dated 19th December 1918, (Ex. III); and the kanom was actually renewed by a registered document Ex. IV dated 19th December 1920. It is pleaded that the plaintiff's melcharath was obtained with notice of the defendant's agreement for renewal.

3. The District Munsif found that Ex. III was not a genuine document and decreed the plaintiff's suit. What he meant was that Ex. III was not executed on the date it bears; not that it was not executed by the jenmi.

4. On appeal the District Judge found that Ex. III was a genuine document and that it was executed on the date it bears and there is no reason to suspect that it was a collusive document. He then observed:

The whole thing depends upon the question whether there was any agreement to renew on 4th Dhanu, as pleaded by Defendants 1 and 2. If there has been such an agreement the law fixes the plaintiff with notice of it and the melcharath obtained by the plaintiff with notice of that agreement cannot prevail. This

position, or rather this view of the case, is accepted as correct before me by the vakils on both sides.

5. On this view he allowed the appeal and dismissed the plaintiff's suit. The plaintiff files the second appeal.

6. In second appeal Mr. Krishna Variar who appears for the appellants raises two points. First that Ex. III is inadmissible in evidence. His contention is that though Ex. III purports to be a receipt, it is really an agreement to lease; and as the definition of lease under the Registration Act includes also an agreement to lease, the document requires registration according to the Full Bench decision in *Narayana Chetty v. Subbayya Servai* [1912] 35 Mad. 63 Mr. C. T. Govindan Nambiar who appears for the respondent points out that the scope of that Full Bench decision has been limited by the decision in *Hanumantha Kumari Debi v. Midnapur Zamindari Co.* [1920] 47 Cal. 485 The appellant's counsel does not deny this but he contends that Ex. III amounts to a document operating as a present demise within the meaning of the Privy Council decision above quoted and argues that Ex. III is inadmissible in evidence. It seems to me that the agreement to lease was really contemporaneous with Ex. III, that there is really no oral agreement to lease made at a time far apart and distinct from the time of Ex. III. At the same time it seems to me that Ex. III -was not intended to reduce to writing the terms of the agreement though it refers to them fully. It shows that the lease is to be renewed on the receipt of a further manusham of rupees Thirty- six and Rs. 30-14-9 have been received as part payment towards this manusham of Rs. 36. It also shows that the balance of the manusham Rs. 5-1-3 was to be paid on the date of the demise and it was not paid on that date. It is unnecessary for me to pursue this question whether Ex. III is to be regarded as an agreement to lease. Assuming it is an agreement to lease, I am clear that it cannot amount to a document operating as a "present" demise, because the parties did not intend a demise until the payment of Rs. 5-1-3 and so long as that amount remained unpaid no operative demise could be intended. It is true, as Mr. Krishna Variar contends and as it has been held in *Ramjoo mahomed Vs. Haridas Mullick and Others*, that the mere fact that another document of lease was afterwards executed has no bearing on the construction of the agreement. It is not cause there is another document later on that I hold that Ex. III is not operative as a demise but it is because that only on the happening of some contingent event the demise was intended to come into existence. In this respect it resembles the decision in *Vanumantha Kumari Debi v. Midnapur Zamindari Co.* [1920] 47 Cal. 485 I therefore hold that Ex. III is not inadmissible for want of registration.

7. The 2nd point raised by Mr. Krishna Variar is that as between Ex. III and Ex. A obtained by his client, Ex. A ought to prevail u/s 50 of the Registration Act. He relies on *Fnzludeen Khan v. Fakir Mahomed Khan* [1880] 5 Cal. 336 I do not think there is any scope for the application of Section 50 of the Registration Act. This is not a case where there is a conflict between two documents of the same

kind, one being registered and the other being unregistered. The decision *Fuzludeen Khan v. Fakir Mahomed Khan* [1880] 5 Cal. 336 and Section 50 of the Registration Act apply where we have got two sale deeds, one being registered, and the other being unregistered or such other similar facts. Here what we have got is plaintiff's valid melcharath and the defendants' mere agreement for renewal of a kanom. It is a question of merely deciding the case on the conflict between the two documents. There is no doubt that Ex. A ought to prevail as between Ex. A the melcharath and Ex. III. The ground on which the defendant resists the suit and on which the District Judge has decided is that the agreement may be enforced not only against the parties to the document but against the transferee with notice of such agreement. In deciding such, point we have nothing to do with Section 50 of the Registration Act. We have to apply Section 40 of the Transfer of Property Act and Section 27 of the Specific Relief Act. u/s 40 of the Transfer of Property Act there is no doubt as to the sense in which the word "notice" is used. "Notice" for the purpose of the Transfer of Property Act is defined u/s 3 of that Act and includes also constructive notice. On the question of constructive notice there is a leading decision of *Daniels v. Davison* [1809] 16 Ves. 249 according to which a purchaser is presumed to have constructive notice of not only the tenants, interest but also of other equities which the tenant in possession had. It is true that in several cases in England, Judges have refused to extend the principle of *Daniels v. Davison* [1809] 16 Ves. 249. But it has been repeatedly applied in India and I do not see any trace of any Court in India showing its unwillingness to apply that decision with reference to the doctrine of notice under the Transfer of Property Act. The Privy Council case of *Barnhart v. Green Shields* 9 Moore P. C. 18 has laid down a similar rule, though on the facts there is no scope of its application. In *Faki Ibrahim v. Faki Gulam A. I. R. 1921 Bom. 453* Macleod, C. J., and Fawcett, J., both refer to *Daniels v. Davison* v. [1809-11] 16 Ves. 249. Fawcett, J., also refers to the third illustration to CI. (b) of Section 2 of the Specific Relief Act. These two cases are on all fours with the present case and support the respondent. I do not wish to refer to other cases cited by the respondent because it is just possible to distinguish them on some ground or other. I would only mention that the decision in *Daniels v. Davison* [1809] 16 Ves. 249 was also referred to in this Court by Schwabe, C. J., in *Parthasarathy Aiyar v. Subbaraya Gramany* A. I. R. 1924 Mad. 67 with approval and also in *Puthenpurayil v. Kandiyal* [1916] 2 M. W. N. 31 where Sadasiva Iyer and Moore, JJ., refer to *Daniels v. Davison* [1809] 16 Ves. 249.

8. Mr. Krishna Variar refers to an unreported decision of Phillips, J., in Second Appeal No. 1688 of 1922. The only case cited in that judgment is the last mentioned case *Puthenpurayil v. Kandiyal* [1916] 2 M. W. N. 31. But the facts of this case are distinguishable from the case cited. In the case before Phillips, J., the interval between the melcharath and the agreement for the renewal by the plaintiff was two days. Whether this circumstance is really a sufficient ground of distinction and whether Phillips, J., has correctly decided the case it is not for me to say. If the matter arises before me I may probably be inclined to dissent from

him. In the present case the interval between this agreement for renewal and the plaintiff's melcharath was 17 days, and there was nothing to prevent the plaintiff from enquiring of the defendant before he finally made up his mind to obtain a melcharath. The appellant's counsel points out that the stamp for the melcharath was obtained on the 31st December and the transaction must have been settled by that time. There was an interval of 12 days. Assuming that the plaintiff's negotiations for melcharath were completed by the 30th or 31st December or if it was before there was nothing to prevent him from going and enquiring the kanomdar. It seems to me that in such a case it is the duty of the melcharathdar when his negotiations with the jenmi are completed to make enquiries of the kanomdar in possession and if he does not do so he will find himself liable to be defeated by an agreement for renewal of the kind in this case. I therefore think that the decision of the District Judge is right and the second appeal is dismissed with costs. N. S. Appeal dismissed.