

(1932) 11 MAD CK 0014
In the Madras High Court

(Thrikkaikat Madathil Mooppu Stanom Kollath) Raman
Thirumumpu

APPELLANT

Vs

(Mullasserri Karnavan) Karunakara Menon and Others

RESPONDENT

Date of Decision : 16-11-1932

Acts Referred:

Citation : AIR 1933 Mad 852 : 147 Ind. Cas. 735 : (1933) 38 LW 843

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The grant sought to be set aside in the suit was made by a previous matathipathi in the year 1025, corresponding to

1849-1850. It is evidenced by Ex. A, and it recites that for a sum of 2,470 fanams (the kanam and the puramkadam amounts) the land is demised

to the grantee, who may hold it on Karankari right without being liable to surrender it. Ex. A mentions the total pattam to be 389 paras odd, out of

which about 106 paras are to be retained by the grantee for interest on the kanam and puramkadam amounts and the balance of about 282 paras

is to be paid to the grantor for purapad. The grant goes on to say that the kanam shall be renewed from time to time on payment of the renewal fee

and that the grantee may enjoy the property in perpetuity. The property is said to belong to a dawaswom, of which the head for the time being of

the mutt in question is the manager.

2. The first point that I have to decide is, whether the predecessor of the plaintiff exceeded his powers in making what may be described as a

permanent alienation of the property. The authorities lay down that, although ordinarily the manager cannot grant a perpetual lease of temple

property, he possesses in special and unusual circumstances the power of making such a grant; in other words, the alienation will be upheld, if

some imperative necessity is proved. In the present case, the purpose for which the alienation was made, is not recited in the deed. The defendants

allege in their written statement that the grant was made in consideration of the fact that the grantee's husband by exerting his influence got several

recalcitrant tenants to recognise the right of the temple to certain properties and that, but for his intervention, the temple would have lost its right to

those valuable items. To this effect some evidence was adduced, and the lower Courts were perfectly right in treating it as hearsay; assuming then

rightly that there is no positive evidence as to the circumstances in which the grant was made, does it follow that it should be set aside? Both the

Judicial Committee and this Court have laid down in several cases as to how the evidence relating to ancient transactions should be treated: *Banga*

Chandra v. Jagat Kishore AIR 1916 PC 110, *Venkata Reddi v. Rani Saheba of Wadhwan* AIR 1920 PC 64. *Magniram Sitaram v. Kasturi Bhai*

Mani Bhai AIR 1922 PC 163, *Anappindi Somayya Vs. Ayyalasomayajula Venkayya and Others*, and *Aukula Sanyasi Vs. Gundala Ramachandra*

Rao and Others, .

3. The suit was brought 70 years after the date of the grant, all the persons connected with it having in the meantime died. The transaction was

recognised and treated as valid by subsequent matathipathis: in 1869 one of them received renewal fee and passed the receipt, Ex. 3, and in 1901

another matathipathi granted Ex. 4, a receipt, for another sum of renewal fee. The matathipathi, who filed the suit, showed by his conduct in

receiving rent for three successive years; that he had no intention of repudiating the transaction. Having regard to the lapse of time, the lower

Courts have, from the circumstances to which I have referred, rightly inferred the necessity for the alienation, and I am prepared to accept their

finding and uphold the grant. In a recent case *Kumarasami Mudaliar Vs. Narayansami and Others*, , the point has been fully considered whether in

the absence of recitals in the grant as to necessity, presumptions are permissible to fill in the details which have been obliterated by time. The

conclusion arrived at there was, that the rule enunciated in the judgments of the Judicial Committee equally applies even in the absence of such

recitals. That is a direct authority supporting the defendant's case and I am prepared to follow it.

4. The learned Advocate-General contends that the rulings, to which I have referred, do not apply as the grant is not a lease in perpetuity, but gives

the grantee an option to demand a renewal from time to time. This in my opinion makes no difference. The lease may not be strictly in perpetuity,

but the grantee by exercising his option may enjoy the property permanently. If there were grounds justifying the permanent lease, those very

grounds would also justify a grant containing the option clause. In, principle there can be no difference between the two cases. The learned

Advocate-General asks, would the Court compel the trustee to renew the lease? The answer is obvious. If the original grant was made for proper

necessity, there is no reason why the Court should not compel the observance by the succeeding trustees of the terms in the lease. Lastly, I need

not consider the argument relating to the supposed clog on the equity of redemption, for the simple reason that the transaction in question is by no

means a mortgage pure and simple, but resembles more closely lease. In the result, the second appeal is dismissed with costs: two sets.