
(1924) 11 MAD CK 0013
In the Madras High Court

(Vettiparambil) Ahammad

APPELLANT

Vs

Cheriath Chennamangalath Manakkal Karnavan and Others

RESPONDENT

Date of Decision : 06-11-1924

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Citation : AIR 1925 Mad 1127

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The facts are somewhat complicated, and I think it is necessary to state them in great detail. Chiyamu was

apparently the original owner of the property, but by Exhibit B, dated the 15th January, 1888, he acknowledged the plaintiff's title and obtained a

kanom (mortgage) of the property. Whatever the rights originally of the parties were, that on the date of Exhibit B the plaintiff became the owner of

it there is no question. Chiyamu, who was thus only a mortgagee, executed a deed of sale, Exhibit 3, on the 8th February, 1897, in favour of his

son-in-law Mooppan. The sale was made on the footing that Chiyamu was absolutely entitled to that property. In October off November of the

same year Chiyamu died). and on the 23rd June, 1898, a partition, Exhibit G. was effected among his heirs and the kanom right of Chiyamu over

the property in question fell to the share of Aiyasabi, his daughter. The sale in favour of Mooppan was thus ignored in the deed of partition, and it

is equally important to notice that the only right which Chiyamu was assumed to possess was the kanom right. Exhibit G was attested by

Mooppan, the brother-in-law of Aiyasabi. The next transaction is the transfer in favour of Mooppan by Exhibit K dated the 2nd of August 1898,

of the kanom right which fell to the share of Aiyasabi; It is suggested that Exhibit E, is not a genuine document. The Subordinate Judge assumes

that it is genuine, but does not record any definite finding. The question is not, however, of much importance as Mooppan recognized subsequent

to Exhibits G and K the jenm right (absolute title) of the plaintiff and paid him rent on the footing that he was only & kanomdar. Payment of rent is

evidenced"" by Exhibit P series. That rent was paid is found as a question of fact by the Subordinate Judge. Whether Mooppan came into

possession of the property under conveyance to him, Exhibit 3 or under Exhibit K, is not distinctly found. This again, in my opinion, is not material.

It is established beyond doubt that the right which he claimed over the property was that of a kanomdar and that he admitted the absolute right of

the plaintiff and paid trim rent. Mooppan's possession, therefore, even subsequent to Exhibit 3 was that of a tenant. I must now refer to another

set of transaction in virtue of which the 2nd defendant claims the property. Mooppan by Exhibit 6, dated the 19th June, 1906, professing to be the

owner of the property, mortgaged it by way of hypothecation to one Parangodan. Possession remained with Mooppan, and Parangodan assigned

the hypothecation to Kunhi Bava. The latter filed suit No. 695 of 1919 against Mooppan to enforce his mortgage and obtained a decree and

brought the property to sale. The second defendant became the purchaser at the Court auction. It is not disputed that the second defendant has not

been in possession of the property for 12 years. The short question to be decided is whether Article 134 of the Limitation Act is applicable. It runs

thus : ""To recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or

mortgagee for valuable consideration 12 years from the date of transfer.

2. The contention of the 2nd defendant is, that Chiyamu was the mortgagee and he transferred it to Mooppan and that there-fore, the suit which

was instituted more than 12 years after the date of Exhibit 3 (the sale in favour of Mooppan) is barred. ""Unless the transfer in favour of Mooppan

was for valuable consideration, Article 134 would not apply. Although the circumstances of the case make it highly probable that Mooppan did not

pay consideration, I do not propose to rest my judgment on that, as the lower Appellate Court has not given a definite finding on the point. Then

did Mooppan get into possession of the property under Exhibit 3 or under Exhibit K? Though on this question again, I am inclined to think that he

came into possession under Exhibit K, I do not desire to make this the basis of my judgment. Where it necessary, I would have called for findings

on these questions. I think, however, it is unnecessary to put the parties to further expense and permit further time to be taken up. Mooppan

notwithstanding the fact that he took the sale-deed admitted the jenm right of the plaintiff, dealt with him on the footing that he was the mortgagor

landlord, acknowledge his title, paid him rent and constituted himself mortgagee tenant and throughout assumed his possession to be that of a

tenant; Mooppan then would have had no defence to the action of the plaintiff. He would not have been in a position to rely upon Article 134. The

2nd defendant claims through Mooppan and he cannot be in a better position than Mooppan was. On this short ground, I am clearly of the opinion

that Article 134 is not applicable.

3. If the plaintiff by his conduct had led the 2nd defendant to believe that Mooppan was the owner of the property, the plaintiff might u/s 41 of the

Transfer of Property Act, be precluded from disputing the title of Mooppan. But it is not pretended that the plaintiff has done any act which might

produce this result.

4. A subsidiary contention was raised in regard to the apportionment of the kanom amount. The Counsel for the respondent, however, in order to

avoid a further enquiry, has agreed to pay the full kanom amount, namely, Rs. 61-1-2 although the amount, payable in respect of the suit property

has been held to be only Rs. 28-14-11.

5. The appellant's learned vakil has contended that he disputes the amount of purapad allowed. No argument appears to have been put forward in

regard to this before the lower Appellate Court. To induce me to send this case back, this contention has now been raised. I overrule it.

6. Subject to the modification, that the Kanom amount is raised from Rs. 28 14-11 to Rs. 61-1-2, the second appeal fails and is dismissed with

costs. Time for redemption is extended by three months.