

Janardhanan Vs. Kuppany

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Court : Kerala

Decided On : Nov-12-1958

Reported in : AIR1959Ker215

Judge : K.T. Koshi, C.J.,; M.S. Menon and; N. Varadaraja Iyengar, JJ.

Acts : Tenancy Law; Malabar Tenancy Act, 1930 - Sections 2(14)

Appeal No. : S.A. No. 481 of 1955 (M)

Appellant : Janardhanan

Respondent : Kuppany

Advocate for Def. : V. Balakrishna Eradi, Adv.

Advocate for Pet/Ap. : T.C. Raghavan, Adv.

Disposition : Appeal dismissed

Judgement :

M.S. Menon, J.

1. The plaintiff in O. S. No. 316 of 1951 of the Court of the District Munsiff of Palghat is the appellant in this second appeal. The suit was for redemption and recovery of possession of the items of property specified in the plaint and for consequential reliefs. The trial Court said:

'In the result, the suit is decreed for redemption and possession against the defendants with future purappad at the rate of 110 paras of paddy a year on payment of Rs. 222/13/9 as mortgage amount and Rs. 194-2-6 as value of improvements. Set-off allowed. Both parties to bear their costs.'

2. The defendants appealed to the Court of the Subordinate Judge of South Malabar at Palghat. The Judge allowed the said appeal. A.S, No. 117 of 1054: .

'In the result, the appeal is allowed, the decree of the lower court is modified and the plaintiff is given a decree for Rs; 449-11-8, the arrears of purappad claimed in the plaint, and costs of, suit. The suit for redemption and possession is dismissed with costs of the defendants. In appeal the appellants will get their full costs from the respondent.'

3. The document concerned is Ext. B-1 dated 30-12-1919. The decision of the Subordinate Judge is based on his conclusion that it represents a kanom demise.

4. Section 21 of the Malabar Tenancy Act, 1929 (omitting the two provisos thereto which are not material) reads as follows:

'Notwithstanding any contract to the contrary, whether entered into before or after the commencement of this Act, every cultivating verumpattomdar, every customary verumpattomdar, every kanomdar, every kanom-kuzhikanomdar, every kuzhikanomdar, every tenant of a kudiya dappu and every holder of a protected ulkudi or a kudikidappu shall have fixity of tenure in respect of his holding and shall not be evicted therefrom except as provided in this Act'.

and if Ext. B-1 spells kanom there can be no doubt that the Subordinate Judge was right and that this second appeal has to be dismissed. 'Kanom*' is defined as follows in section 2(14) of the Act:

"Kanom' means the transfer for consideration in money or in kind or in both by a landlord of an interest in specific immovable property to another (called the 'kanomdar') for the latter's enjoyment, the incidents of which transfer include

(a) a right in the transferee to hold the said property liable for the consideration paid by him or due to him which consideration is called 'Kanartham',

(a) the liability of the transferor to pay to the transferee interest on the kanartham, and

(c) the payment of 'michavaram' by the transferee.'

5. If the words 'called the 'kanomdar"' and 'called 'kanartham"' mean that the transferee should be styled 'kanomdar' and the consideration 'kanartham' in the document concerned, then Ext. B 1 will certainly not pass the test as neither the word 'kanomdar' nor the word 'kanartham' is used therein. In S. A. No. 1096 of 1952 (M) Kumara Pillai J., said:

'To my mind, these words do not signify that the transferee should be referred to specifically in the document itself as the kanomdar or the consideration should be referred specifically in the document as kanartham'

We are in agreement with this view.

6. What the Legislature has done is only to specify the usual Malayalam expressions for the transferee and the consideration in such cases so that the meaning may be clear and confusion avoided when those expressions are used. Both the words 'Kanomdar' and 'kanartham' occur in subsequent portions of the Act.

7. This type of legislative drafting is by no means unfamiliar. Section 126 of the Indian Contract Act, 1872, for example, says:

'A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'.'

It has never been contended that the word "called" means styled as such in the document concerned and that there can be no contract of guarantee unless the

words 'surely' 'principal debtor' and 'creditor' find a place in the contract itself.

8. Section 22(1) of the Act provides : 'Notwithstanding anything in the Indian Evidence Act, 1872, or in any other law for die time being in force, any person interested in any land may plead, adduce evidence and prove that a transaction entered into on or after the 1st January 1916 and purporting to be a mortgage of that land is not in fact a mortgage, but a transaction by way of kanom, kanom-kuzhikanom, kuzhikanom, verumpattom or other lease, under which the transferee is entitled to fixity of tenure in accordance with, the provisions of Section 21.'

Ext. B1 was executed subsequent to the 1st January 1916 and under the subsection the defendants arc entitled to prove that even if it purports to be a mortgage it is not really a mortgage but a kanom as defined in the Act and that they am entitled to fixity of tenure under section 21 of the Act.

9. Ext. B 1 is no doubt styled a (Karipanayam) but the name given by the parties to a document though important is by no means conclusive. It is also true that in Ext. AG, an affidavit of the 1st defendant dated 30-7-1942, Ext. B-1 is referred to as a (Karipanayam) document. The judgment under appeal deals with Ext. A6 as follows;

'It is true that in a previous proceeding, the 1st defendant had stated in an affidavit evidenced by Ext. A6 that he was holding the property on karipanayam right. From this, it is contended that the defendants themselves were treating all along the holding only as a possessory mortgage. This statement in Ext. AC is seen to have been made in July, 1912. At that time it was immaterial whether the holding was a kanom or karipanayam. It is only now that anything turns on this difference when this additional protection is given to the tenant. When Ext. B1 was described as a karipanayam, it is only in accordance with that recital that the 1st defendant held himself out as a karipanayamdar under Ext. A6'.

10. There is a full discussion of all the relevant matters in paragraphs 6 to 11 of the judgment of the Subordinate Judge. He emphasised the following among other circumstances:

(1) that no amount was advanced on the date of Ext. B1 and that the consideration for the document was the kanartham of a kanom of 1906; and

(2) that there was no settlement of accounts regarding the value of the improvements effected by the tenant during the currency of the kanom demise of 1906; and said: 'Looking at the prior history of the property, the wording of Ext. B1 and the essential identity in character between the holding created by Ext. B-1 and the prior holdings, I feel little doubt that Ext. B1 is, in substance, only a renewal of the prior kanom and that defendants are in possession only as kanomdars.'

A reading of the document as a whole supports the conclusion and we see no reason why it should not be upheld.

11. It follows that this second appeal has to be dismissed. Judgment accordingly.

12. The appellant will pay the costs of the respondents. The receiver appointed by this court pending this second appeal is discharged.

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