Krishnan Vs. Veloo and ors.

Krishnan Vs. Veloo and ors.

SooperKanoon Citation : sooperkanoon.com/792037

Court : Chennai

Decided On : Mar-13-1891

Reported in : (1891)ILR14Mad301

Judge : Muttusami Ayyar, ;Parker and ;Wilkinson, JJ.

Appellant : Krishnan

Respondent : Veloo and ors.

Judgement :

1. The question for the Full Bench is whether the third respondent, the samudayam of Puthukulangarai devasom, had power under the instrument of 916 or A.D. 1741 to create the melkanom of the 2nd July 1885 upon which this suit was brought. The appellant (plaintiff) sued to recover from the first and second respondents ten items of lands together with arrears of rent. The lands in question belong to a Hindu temple called Puthukulangarai Bhagavathi devasom in the Nedunganad taluk of South Malabar. In 1741 the Uralers or trustees of the institution executed in favour of the third respondent's predecessor a 'teet' or document in respect of devasom properties and their management, and in July 1885 the third respondent granted a melkanom to the appellant. The first and second defendants are the parties in possession of the lands in dispute which have been demised to them on kanom on behalf of the devasom. Unless the document of 1741 created a mortgage with possession, the third respondent, it is conceded, would not be competent to grant a melkanom which always pre-

supposes a kanom. The point therefore for consideration is whether the document of 1741 created a kanom or a mortgage with possession. It is in these terms:

Teet granted by the Uralers to Chitambara Patter: You are appointed samudayam of Puthukulangarai devasom and we have received from you a kanom of 18,000 fanams on the devasom properties. From the gross rent of 2,850 paras of paddy due to the devasom, you are to appropriate 1,800 paras to interest on the money due to you and after deducting the amount and 400 paras of paddy allowed to tenants for interest on their kanom amount, 8,000 fanams, you are to defray the expenses of the devasom with the remainder and keep accounts.

2. The document is not framed like an ordinary kanom document and there are no words of demise on kanom and there is no indication of any intention to transfer property or right of possession. It refers first to Chitambara Patter's appointment as samudayam, and as such it was his duty to collect the rent due to the devasom, to pay such charges as the Uralers might direct him to pay, to appropriate the balance to the requirements of the devasom and to keep accounts. The document proceeds to authorise him only to do those things which a samudayam may do and is bound to do. It refers next to receipt of a kanom of 18,000 fanams on devasom properties and thereby certainly shows an intention to create a charge for the amount in favour of the samudayam. But the word kanom signifies, in its primary sense, only an advance made to a proprietor of land as security for rent or patom, and it is only when the context shows that it is used as a word of tenure in connection with demise of land, that it is accepted, according to local usage to denote, in its secondary sense, an intention to create a mortgage with possession at least for a term of twelve years. The material words in the document are 'received a kanom of 18,000 fanams on devasom properties' and they do not show that the term kanom is used as a word of tenure. The document does not authorise the samudayam to grant, renew or redeem kanoms or to eject tenants in his own right, nor does it attach to the transaction any other recognised incident of a demise on kanom.

3. A samudayam may become a creditor of the devasom and his debt may also be secured on devasom properties. If the loan were subsequent to his appointment

as samudayam, his right to collect rent, and even his possession as samudayam, could not be referred to his position as creditor so as to improve it into that of a mortgagee with possession. In the absence, then, of a clear indication of an intention to grant a kanom, it could make no difference that the loan and the appointment as samudayam were simultaneous, the test being always the true intention of the parties so far as it could be ascertained from the language of the instrument and the nature of its provisions.

4. A part from his interest as samudayam, the only beneficial interest which Chitambara Patter acquired by virtue of his loan consisted in its being charged on devasom properties and in the constitution of the rent which he was required to collect as samudayam into a fund from which he might pay himself the interest accruing due every year on the money lent by him. This may place the Uralers under an obligation to repay the debt before determining Chitambara Patter's power to collect the rent due to the devasom; but it is by no means sufficient to create between them the legal relation of mortgagor and mortgagee with possession.

5. In connection with the interpretation of ancient documents, it is usual to look at the conduct of the parties concerned under them when there was no disagreement between them. In this view it is not unimportant to refer to the allusion made by the Subordinate Judge to both the Uralers and the samudayam having jointly instituted a suit, so early as 1839, to eject a tenant.

6. As to the observations of the Court in the second appeals mentioned in the Order of Reference, the decision in Satta Nathan Patter v. Kunhunni Second Appeal No. 806 of 1872, unreported is in accordance with the construction which we put on the document of 1741. In that case both the lower Courts held that on the terms of that document, the successor of Chitambaram was not entitled to eject a tenant, but was only entitled to collect the rent, and the High Court affirming their decisions, dismissed the second appeal.

7. As to Muppil Nayar v. Shathanatha Patter Second Appeal No. 816 of 1880, unreported it arose from a suit instituted by two of the Uralers to recover rent from certain tenants and possession of the devasom land cultivated by them. The

ground of claim was that as Uralers, they were entitled to collect rent and to eject tenants on behalf of the devasom. The Court of First Instance held that under the document of 1741, the right to collect rent vested exclusively in Chitambara Patter and his successors, whilst the right to eject tenants vested jointly in the Uralers and Chitambara Patter. The lower Appellate Court placed the same construction on the document, adding, however, that equity would certainly require that before the samudayam was ousted from his office, he should be repaid the advance made by him. But on second appeal, this Court observed that defendant No. 5 (samudayam) was found to be a mortgagee with possession under the document of 1741, and that he alone would be entitled as mortgagee in possession to exercise the right of a landlord and on that ground it dismissed the second appeal. In his judgment the District Judge referred to the suit of 1872 and adverting to the decision therein that the samudayam could not himself eject the tenants of the devasom under the document of 1741, remarked that it did not follow that the Uralers alone had that right. The remarks of this Court which adopted the finding of the District Judge went beyond its scope in describing the samudayam as a mortgagee in possession with the right of a landlord over the devasom property. The District Judge, as far as it can be gathered from his judgment, only found that the status of Chitambara Patter's successor was substantially that of a samudayam with power as such to collect rent united to an equitable claim to be repaid his advance before that power was taken away from him. Nor was it necessary to say more for the requirements of that case.

8. As regards Muppil Nayar v. Shathanatha Patter Second Appeal No. 239 of 1886, unreported it arose from a suit instituted by two of the Uralers against Chitambaram's successor for an account or receipt of rents under the document of 1741 and for an injunction restraining the defendant from further interference with the management of devasom property. The suit was dismissed by the High Court and by the lower Courts on the ground that as the Uralers were entitled to redeem, they should have sued for redemption and not simply for an account and for an injunction. The contention in the High Court was that the District Judge treated the matter as res judicata, that the then defendants, Chitambaram's representatives, were mortgagees in possession whilst in reality they were mere samudayams bound to render an account to Uralers, and not mortgagees in possession under

the document of 1741. this Court overruled the contention on three grounds, viz., (1) that the District Judge did not treat the matter as res judicata; (2) that he found as a fact upon the evidence that the defendants were mortgagees in possession, and (3) that after bringing evidence to show, in the suit which gave rise to Muppil Nayar v. Shathanatha Patter Second Appeal No. 816 of 1880, unreported, that the mortgage had been satisfied, that defendant No. 5, Chitambaram's legal representative, had resigned his samudayamship and his rights under the document of 1741, and after supporting those pleas by documents which were found to be forgeries, it was not open to the Uralers to come into Court and say again that the then defendants were merely agents bound to render accounts of their trust, tracing back their title to Exhibit I (the document of 1741). Now, none of the three grounds touches the question of construction which is at present under our consideration; indeed no opinion was expressed upon it in that case. As regards the first, this Court only held that the matter was not declared to be res judicata by reason of the decision in Muppil Nayar v. Shathanatha Patter Second Appeal No. 816 of 1880, unreported, and as to the third ground, it decided in substance that after the false averments referred to, the Uralers were not at liberty to get behind the prior decision and insist on the liability to account without repaying the amount advanced. With reference to the second ground, the finding of the District Judge was arrived at in advertence to the observations of the High Court in Muppil Nayar v. Shathanatha Patter Second Appeal No. 816 of 1880, unreported which, as already stated, went beyond the scope of the District Court's finding which it was intended to adopt in second appeal. As none of the prior decisions has the force of res judicata or is conclusive on the question of construction, we consider that the question referred for our opinion must be answered in the negative.

9. [This second appeal having come on for final disposal, the Court held melkanom to be invalid and dismissed this second appeal with costs.]