

## **Thayyil Mammo And Anr. vs Kottiath Ramunni And Ors. on 4 May, 1965**

**Equivalent citations: AIR1966SC337, 1965(0)KLT1196(SC), AIR 1966 SUPREME COURT 337**

**Bench: K. Subba Rao, Raghubar Dayal, R.S. Bachawat**

### **JUDGMENT**

**B.S. Bachawat, J.**

1. The properties in suit belonged to the Muzhappilangad Devaswam in jenmi rights, and under the Devaswam, the Thayyil tarwad had leasehold rights. One Thayyil Mayan came to hold the properties under a Kaivasam Panayam deed executed by the Thayyil tarwad. On February 5, 1929, Mayan and his brothers, Abubacker and Kader executed a kanom (Ex. A-3) of the suit properties in favour of Bathala Baithan. By a marupat (Ex. A-4) executed on the same day, Mayan took back the properties on lease from Baithan. Subsequently, by Ex. A-5 and later Ex. A-7, Mayan leased items 3 to 5 of the suit properties to Koran. In early 1939, Mayan (died leaving defendants 7 to 13 as his heirs. By a deed (Ex. A-8) dated April 28, 1939, Abubacker obtained a surrender of the leasehold rights from Koran. On May 15, 1939, Abubacker executed a kanom (Ex. A-10) in respect of all the suit properties in favour of Kottiath Raman. Raman died shortly thereafter leaving defendants 1 to 5 as his heirs. By a registered deed (Ex. B-2) dated February 27, 1941, defendants 1 to 5 obtained from Baithan a surrender of his kanom rights under the deed dated February 5, 1929. The third defendant died during the pendency of the suit leaving defendants 18 to 23 as her legal representatives. By a deed dated April 9, 1947, defendants 7 to 13, the heirs of Mayan, assigned their rights in the suit properties to the plaintiffs. On October 4, 1947 the plaintiffs instituted a suit for recovery of possession of the suit properties on payment of the kanom amount payable under the kanom dated February 5, 1929. The defendants claimed protection from eviction. The trial Court decreed the suit. The first appellate Court confirmed the decree. On second appeal, the High Court dismissed the claim for possession and mesne profits and instead, granted a decree for the michavaram due under Exs. A-8 and A-7. The plaintiffs now appeal to this Court by special leave.

2. The Courts below concurrently held that Mayan exclusively held the rights in the suit properties acquired under the Kaivasam Panayam deed dated August 11, 1919 and Abubacker and Kader had no right therein, the plaintiffs duly acquired the rights of Mayan under the assignment dated April 9, 1947, and Abubacker could not lawfully grant kanom rights under Ex. A-10 to defendants 1 to 5. The first two Courts held that the Kanartham in respect of the kanom dated February 5, 1929 exceeded 40 per cent of the value of the jenmi's rights in the holding and accordingly the defendants could not claim any fixity of tenure and protection from eviction under Clause (iii) of the second proviso to Section 23 read with Section 21 of the Malabar Tenancy Act, 1929 (Madras Act XIV of 1929). The

District Court also held that the surrender deed (Ex. A-8), dated April 28, 1939 could not operate as assignment of the leasehold rights of Koran in respect of items 3, 4 and 5 of the suit properties and consequently the kanom (Ex. A-10), dated May 15, 1939 could not operate as a sub-lease of those properties by Abubacker to Raman and the defendants could claim no protection from eviction under Section 43 of the Malabar Tenancy Act.

3. During the pendency of the appeal to the High Court, the Kerala Stay of Eviction Proceedings Act, 1957 (Act 1 of 1957) came into force, and the appeal was stayed under the Act. On February 21, 1961, the Kerala Agrarian Relations Act, 1960 (Act 4 of 1961) came into force, and the appeal came up for disposal in accordance with Section 95 of the Act. The appeal was finally disposed of on July 20, 1961. Both parties admitted before the High Court that the deed (Ex. A-3), dated February 5, 1929 was a kanom within the meaning of the Kerala Agrarian Relations Act, 1960. The High Court held that the deed of surrender (Ex. A-3), dated April 28, 1939 operated as an assignment of Koran's rights to Abubacker in respect of items 3, 4 and 5 of the suit properties and the Kanom (Ex. A-10), dated May 15, 1939 operated as a sub-lease by Abubacker in respect of those properties. The High Court also held that the deed of surrender (Ex. B-2), dated February 27, 1941, operated as an assignment of the kanom rights of Baithan in favour of defendants 1 to 5. The High Court held that consequently defendants 1 to 5 became the tenants of the suit properties, and were entitled to fixity of tenure and protection from eviction under the Kerala Agrarian Relations Act.

4. On December 5, 1961, this Court struck down a portion of the Kerala Agrarian Relations Act, 1960 as unconstitutional. Later, in November, 1962, the Kerala High Court struck down several other provisions of the Act as unconstitutional. During the pendency of this appeal, the Kerala Land Reforms Act, 1963 (Act 1 of 1964) came into force. This Act repealed the Kerala Agrarian Relations Act, 1960, and Sub-section (4) (iii) of Section 132 of the Act provided that subject to the provisions of Clause (ii), the Kerala Agrarian Relations Act, 1960 shall not be deemed to have conferred any right or imposed any liability on any person as if the said Act had not been enacted. The rights of the parties must now be decided in accordance with the provisions of the Kerala Land Reforms Act, 1963. Section 2 (22) of that Act defines "kanom". By Section 2 (57), a tenant includes a kanomdar. Section 13 provides that notwithstanding anything to the contrary contained in any law, custom, usage or contract, or in any decree or order of Court, every tenant shall have fixity of tenure in respect of his holding, and no land from the holding shall be resumed except as provided in Sections 14 to 22 of the Act. The only question in this appeal is whether the contesting defendants are kanomdars and, therefore, tenants within the meaning of the Act.

5. The contesting defendants claimed (1) that the rights granted by Mayan to Baithan under the deed (Ex. A-3), dated February 5, 1929 are kanom rights, and (2) the deed (Ex. B-2), dated February 27, 1941 operates as a valid assignment of the aforesaid kanom rights by Baithan to defendants 1 to 5.

6. Mr. Viswanatha Sastry contended that the rights granted by Ex. A-3 were rights of a usufructuary mortgagee, and were not kanom rights. We think that this contention is not open to Mr. Viswanatha Sastry. In the High Court, the appellants expressly conceded that Ex. A-3 was a kanom within the meaning of the Kerala Agrarian Relations Act, 1960. The definition of kanom in Section 2 (22) of the Kerala Land Reforms Act, 1963 is for all practical purposes the same as the definition of kanom in

Section 2 (18) of the Kerala Agrarian Relations Act, 1960. Having regard to the admissions made by the appellants in the High Court, it must be held that Ex. A-3 was a kanom within the meaning of the Kerala Land Reforms Act, 1963.

7. Mr. Viswanatha Sastry next contended that Ex. B-2 is a deed of surrender and cannot be construed as a deed of assignment of the kanom rights in favour of defendants 1 to 5. Now Ex. B-2 is styled release deed in respect of kanom right, and its operative part reads as follows:

"Since I have this day received to satisfaction in ready cash the sum of Rs. 935 made up of the above balance purappad of Rs. 135 and the kanom amount of Rs. 800, and which you have paid to me, the entire rights, liabilities, and claims belonging to me under the aforesaid kanom deed No. 266 and marupat deed No. 267, have been surrendered to you."

It may be noticed that the kanom deed No. 266 is Ex. A-3 and the marupat deed No. 267 is Ex. A-4.

8. Exhibit B-2 was registered. It was executed for a consideration paid by defendants 1 to 5 to Baithan. It discloses an intention to transfer the kanom rights of Baithan to defendants 1 to 5; its operative words are capable of passing the title, and on its true construction, it operates as an assignment. Mr. Viswanatha Sastry suggested that Ex. B-2 was stamped as a release and not as an assignment. But the paper book does not disclose the amount of the stamp paid on it. Moreover, the nomenclature of the deed and the amount of the stamp paid on it, though relevant, are not conclusive on the question of construction.

9. In *Mt. Oodey Koowur v. Mt. Ladoo*, 13 Moo Ind App 585 (PC), the Privy Council held that a petition admitting that the petitioner had no claim to a certain estate did not operate as a conveyance of her subsequently acquired title, the petition having been filed in a pending suit by a petitioner having no present interest in the estate with a view to avoid an objection as to want of parties, and without receiving any consideration for the transfer of her future title. This case is an authority for the proposition that a bare admission in a document that the executant has no interest in a property, made without any consideration cannot pass his subsequently acquired title to the property. In *Jadu Nath Poddar v. Rup Lal Poddar*, ILK 33 Cal 967 at pp. 983-984, *Dharam Chand v. Mauji Sahu*, 16 Cal LJ 436, *Narak Lall v. Magoo Lall*, *Mathuramohan Saha v. Ram Kumar Saha*, *Mookerjee, J.*, held that a deed of release or relinquishment could not operate as a conveyance and could at most be taken as an admission that the executant had no interest in the property. But those cases do not lay down a proposition of universal application that a deed styled a deed of release cannot operate as a conveyance. In *Hemendra Nath Mukerji v. Kumar Nath Roy*, 12 Cal WN 478, by a registered deed called a deed of disclaimer the executants relinquished all their right, title and interest and claim in the properties in favour of the releasee upon the condition that the releasee would discharge certain debts and the executants would be under no liability to pay those debts. Though the deed was stamped only as a release and not with ad valorem stamp, *Maclean, C. J.* held that on its true construction it was a transfer. We think that a registered instrument styled a release deed releasing the right, title and interest of the executant in any property in favour of the releasee for valuable consideration may operate as a conveyance, if the document clearly discloses an

intention to effect a transfer. In the instant case, Ex. B-2 clearly discloses an intention to transfer all the rights of Baithan to defendants 1 to 5, and though the word "surrender" is used and though the deed is styled a release deed, it operates as an assignment.

10. In view of this finding, it must follow that the kanom rights under Ex. A-3 were duly vested in defendants 1 to 5, and they became the kanomdars, and consequently, they are protected from eviction under the Kerala Land Reforms Act, 1963.

11. In view of this conclusion, it is not necessary to consider whether Ex. A-8 operated as an assignment of Koran's leasehold rights in respect of items 3, 4 and 5 of the suit properties in favour of Abubacker and whether Ex. A-10 operated as a sub-lease by Abubacker to Raman.

12. In the result, the appeal is dismissed. In all the circumstances of the case, we direct that there will be no order as to costs of this appeal.