

but could not say that there was any consideration for this particular agreement. It is clear, therefore, that there was none; and on that ground alone the suit might have been dismissed. But the agreement is in other respects one which it would be against public policy to give effect to as a valid contract, as the provision confining the parties to it to the members of their own caste for all assistance that might be required for carrying on their profession might become a very serious restraint upon trade operations. We are of opinion, therefore, that the terms of the instrument cannot be legally enforced.

1878.

VAITHELINGA  
v.  
SÁMINÁDA.

---

## APPELLATE CIVIL.

*Before Sir Walter Morgan, Kt., Chief Justice, and Mr. Justice Innes.*

KÉSHAVA (3RD DEFENDANT) SPECIAL APPELLANT v. KÉSHAVA,  
(PLAINTIFF) SPECIAL RESPONDENT.\*

1877.  
December 10.

*Kánam—Otti—Time of Redemption.*

*Per curiam,* It is settled law that in the case of Kánam and Otta mortgages it is not competent to the mortgagors to redeem before the arrival of the appointed time.

*Per INNES, J.,* dissenting from *Mashook Ameen Suzzada v. Marem Reddy* (1), if in the case of any mortgage the period for redemption is postponed to a fixed date by special agreement, effect should be given to such agreement.

THIS was a Special Appeal against the revised decree of the Subordinate Judge of South Canara in R. A. No. 151 of 1875.

Mr. *Handley* and V. *Bhāshyam Ayyangár* for the Special Appellants.

A. *Rámachendra Ayyár* for the Special Respondent.

The facts sufficiently appear in the following judgments:—

MORGAN, C. J.—The Otta document C provides for the return of the land on payment of the amount secured at a stipulated period, which has not yet arrived. It is settled that in the case of Kánam and Otta mortgages, it is not competent to the mortgagors to redeem before the arrival of the appointed time. See

---

\* Special Appeal No. 269 of 1877 against the revised decree of K. Krishna Menon, Subordinate Judge of South Canara, dated 21st December 1876, modifying the decree of the District Munsif of Bekal, dated 17th March 1875.

(1) 8 Mad. H. C. Rep., 31.

1877. *Edathā Itti v. Kōpashon Nāyar* (1) and *Kumini Ama v. Parkam*

KĒ'SHAVA  
v.  
KĒ'SHAVA.

*Kolusherī* (2).

The decrees of the lower Courts will be reversed and the suit dismissed. The respondent will bear the costs.

INNES, J.—I agree in the views expressed by the learned Chief Justice so far as they go, but I would go further and say that whenever there is a stipulation of this nature, effect should be given to it. I do not agree in the judgment in the case of *Mashook Ameen Suzzada v. Marem Reddy* (3). There appears to me to be no reason why the period for redemption should not be postponed to a fixed date by special agreement. If to construe the stipulation thus, makes it necessary to suppose that it was intended that the land should not only be mortgaged but leased for a fixed term, I see no difficulty in this supposition. All that it means is that the land is leased for a fixed term after which it enures as the security for the re-payment of the money.

I agree in the result that the decrees below should be reversed and the suit dismissed.

*Suit dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice Innes and Mr. Justice Kernan.*

MORGAN (APPELLANT), DEFENDANT *v.* KIRBY (PLAINTIFF);  
RESPONDENT.\*

1878.  
October 1.

*Easement—Artificial channel—Water, flow of.*

In 1860 R, whom the plaintiff in this suit represented, agreed with Government for the lease of a plot of ground called the D. estate and got possession. In 1865 R took a lease of the estate from Government for 999 years, to enure as a lease from 1860, the time at which he entered upon possession. The defendant's estate adjoined the plaintiff's. Defendant's title, also derived from Government, dated from 1869. A formal lease was granted to his predecessor in 1874 in similar terms to that to plaintiff.

In 1864 R opened an artificial channel for the conveyance of water for the use of his estate. This channel was taken off from a ravine in Government waste land,

(1) 1 Mad. H. C. Rep., 122.

(2) 1 Mad. H. C. Rep., 261.

(3) 8 Mad. H. C. Rep., 31.

(\* Second Appeal against the decree of A. McC. Webster, Acting Judicial Commissioner of the Nilgiris, dated 2nd October 1877, confirming the decree of the Acting Assistant Judicial Commissioner of the Nilgiris, dated 14th March 1877.