

1878.

SRINIVÁSA
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MANAR.

then, nor in any other part of the Act, do we find any provision for the summary adjudication of a suit such as the present. Upon this ground we must dismiss the appeal. The decree will however declare that this decision will be no bar to the plaintiff taking any proceedings that may be otherwise open to him under the general law. We make no order for costs.

Appeal dismissed.

APPELLATE CIVIL.

1878.
November 29.

Before Mr. Justice Innes and Mr. Justice Muttusámi Ayyar.

VAITHELINGA (PLAINTIFF) v. SA'MINA'DA (DEFENDANT).

Public Policy—Void Agreement.

In a suit upon an agreement binding defendants to remain subject to the orders of plaintiff, the head of their caste, not to carry on their trade with the assistance of any other persons than their own caste, and imposing penalties for non-performance. *Held* that it would be contrary to public policy to give effect to such an agreement.

CASE stated under Section 617 of Act X of 1877 by the Judge of the Court of Small Causes at Combaconam. This was a suit for the enforcement of penalties for non-performance of an agreement.

The *Advocate-General* for the Plaintiff.

T. Ráma Ráu for the Respondent.

The Court (INNES, J., and MUTTUSÁMI ÁYYAR, J.) delivered the following judgment in which the facts and arguments sufficiently appear:—

In the agreement in question the defendants bound themselves to remain subject to the orders of the plaintiff, the head of their caste, and not to carry on their profession of working in lead with the assistance of any other persons than their caste people, and to pay certain sums monthly “for our family goddess * * * and to pay any taxes imposed by you for the said pagoda, and to adhere to all other arrangements which you may make.” In failure to perform the agreement, certain penalties are imposed.

The learned *Advocate-General*, who appeared for plaintiff, urged that there might be a good consideration for such an agreement,

* Case No. 18 of 1878 referred under Section 617, Act X of 1877, by the Judge of the Court of Small Causes at Combaconam in Small Cause Suit No. 630 of 1878.

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.

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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. Bháshyam Áyyangár for the Special Appellants.

A. Rámachendra Áyyár 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.