APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Seshagiri Ayyar.

1917, December 19 and 1918, April 15 and 18.

EYUNI RAGHAVACHARYULU AND FOUR OTHERS (PLAINTIFFS NOS. 2, 4, 5, 6 AND LEGAL REPRESENTATIVE OF THE THIRD PLAINTIFF), APPELLANTS,

v.

EPURI GOVINDASARI (DEFENDANT), RESPONDENT.*

Co-sharers—Lease by majority of common land—Validity of lease—Lease, whether binding on minority—Suit by minority in ejectment—Remedy, whether limited to partition only—Form of decree.

A majority of co-sharers in samudayam or common land cannot grant a perpetual lease of the common property.

Where a lease by some of the co-sharers is found to be invalid, the lessee is not entitled to be maintained in his possession, leaving it to those co-sharers objecting to his lease to sue for partition as their only remedy.

Where the lease is by some of the co-sharers to a person who is also a co-sharer, and the suit is by other co-sharers to eject the lessee, the proper decree to be passed is one declaring that the lease is not binding on the plaintiffs and directing recovery of possession by the latter on their own behalf and that of the other co-sharers.

Palaniappa Chetty v. *Sreemath Devasikamony Pandara Sannadhi* (1917) I.L.R., 40 Mad., 709 (P.C.), applied.

Watson and Company v. *Ramchund Dutt* (1891) I.L.R., 18 Calc., 10 (P.C.), explained.

SECOND APPEAL against the decree of T. A. NARASIMHA ACHARIYAR, the Temporary Subordinate Judge of Nellore, in Appeal No. 17 of 1915, preferred against the decree of S. RAMASWAMI AYYANGAR, the Additional District Munsif of Nellore, in Original Suit No. 85 of 1913.

The plaintiffs were the owners of $10\frac{3}{4}$ shares out of 80 shares in a shrotriyam village in which the suit lands which were part of the dry lands of the village were included as the common property of all the sharers. Some of the other sharers (who were owners of 57 shares) gave a permanent and heritable lease of the suit lands to the defendant who was also a co-sharer and the karnam of the village on an annual rent of

* Second Appeal No. 1700 of 1917.

Rs. 150; the extent of lands given as 60 acres more or less in the lease deed was found to be 240 acres on actual measurement. The lease was granted in spite of the objection of the plaintiffs who formed only a minority of the co-sharers. The plaintiffs alleging that the lease was fraudulent and collusive and was not valid in law and binding on them, sued to eject the defendant as a trespasser, or in the alternative prayed for joint possession of the suit lands along with the defendant. The Court of first instance held that the lease was not binding on the plaintiffs and decreed joint possession to the plaintiffs along with the defendant. On appeal by the defendant, the lower Appellate Court reversed the decree and dismissed the suit, holding that the lease was valid and binding on the plaintiffs. The plaintiffs preferred this second appeal.

A. Krishnaswami Ayyar and *M. Patanjali Sastri* for the appellants.

L. A. Govindaraghava Ayyar and *L. Venkataraghava Ayyar* for the respondent.

The JUDGMENT of the Court was delivered by—

SESHAGIRI AYYAR, J.—The suit is by a few sharers of samudayam or common lands for ejectment against the defendant who has obtained a lease of it from the other sharers. The lessee is himself a co-sharer and the karnam of the village. The lease is a permanent one. The extent mentioned is 60 acres, but it has been found by both the lower Courts that it comprises nearly 240 acres. There is a clause in the lease to the effect that the property should be regarded as comprising only 60 acres although the actual measurement may be more or less. The District Munsif held that the lease was not binding and decreed joint possession to the plaintiffs with the defendant. On appeal the Subordinate Judge rightly held that the decree for joint possession was wrong. His view was that, as the lease was given by a majority of the shareholders, it is binding on the plaintiffs.

The principal question argued in second appeal is whether a majority of co-sharers can validly grant a perpetual lease of common property. The Courts below have found that it has not been proved that there is a custom authorizing the majority to impose their will upon the minority. It is now settled law that, unless for unavoidable necessity, a trustee cannot grant a

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permanent lease of trust property. See *Palaniappa Chetty* v. *Sreemath Devasikamony Pandara Sannadhi*(1). It has also been held that a karnavan of a Malabar tarwad cannot grant a permanent lease except under exceptional circumstances. The same rule applies to the managers of Hindu families. At best the position of the majority in this case can only be regarded as that of managers of joint property for themselves and on behalf of others. *Prima facie*, therefore, their action in granting a permanent lease is *ultra vires*. The learned vakil for the respondent referred to the fact that the lands were waste and that it was a prudent act of management to grant a permanent lease. Under the Madras Estates Land Act, in exceptional circumstances, the landlord for the time being is permitted to grant leases on favourable conditions. Even such a lease is not binding upon the successor. *A fortiori* a lease granted in perpetuity by a fraction of the share-holders should not be regarded as binding upon the dissenting minority. Mr. Govindaraghava Ayyar argued that, even if the lease is beyond the powers of the majority, the only remedy open to the plaintiffs is to sue for a partition of their shares. We are unable to agree with this contention. *Watson and Company* v. *Ramchund Dutt*(2) was strongly relied on. In that case the propriety of the lease was not questioned. What the Judicial Committee decided was that it was not open to some of the share-holders to claim joint possession with the lessees who were let in by the other co-sharers. *Lachmeswar Singh* v. *Manowar Hossein*(3) is also to the same effect. In *Madan Mohun Shaha* v. *Rajab Ali*(4) it was held that, a co-sharer being in possession, another co-sharer was not entitled to sue in ejectment against him. In *Dakhyayani Debi* v. *Mana Rau*(5) the Courts implied an assent on the part of the dissentients from the fact of their not objecting to the lease for over ten years. These authorities do not hold that, where a lease is found to be invalid, the lessee should be maintained in his possession leaving it to those objecting to his lease to sue for partition as their only remedy. In the present case, we are unable to agree with the learned vakil for the

(1) (1917) I.L.R., 40 Mad., 709 at p. 721 (P.C.).
(2) (1891) I.L.R., 18 Calc., 10 (P.C.).
(3) (1892) I.L.R., 19 Calc. 253 (P.C.). (4) (1901) I.L.R., 28 Calc., 223.
(5) (1914) 19 C.L.J., 113.

respondent that it was a prudent act of management to grant a perpetual lease of such a large extent of property. We cannot help feeling that the karnam, who must have known more or less the real extent of the property he had taken on lease, took undue advantage of the ignorance of the other co-sharers in obtaining a permanent lease and in getting the clause, we have referred to already, inserted in it.

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In our opinion, the proper decree to be passed is to declare that the lease is not binding on the plaintiffs and that they should be decreed possession for themselves and on behalf of the other co-sharers. We must therefore reverse the decree of the Courts below and grant a decree as above indicated. The plaintiffs are entitled to their costs against the defendant in this and in the lower Appellate Court. As they were content to have a decree for joint possession in the first Court, we make no order as to costs in that Court.

K.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Spencer.

THANGATHAMMAL AND ANOTHER (DEFENDANTS NOS. 5 AND 9), APPELLANTS,

v.

V. A. A. R. ARUNACHALAM CHETTIAR AND SEVEN OTHERS (PLAINTIFF AND DEFENDANTS NOS. 1 TO 4 AND 6 TO 8), RESPONDENTS.*

1918, April 22 and 25.

Hindu Law—Surety—Son's liability—Kinds of sureties—Surety for appearance, assurance and payment, meaning of—Texts of Yajnavalkya, construction of—Debt contracted prior to surety-bond—Effect on son's liability.

Where a Hindu executed a surety-bond stating that he would make the debtor pay within two months the amount due on a promissory note already executed by the latter and that, in default of payment by the debtor, he would pay.

Held, that the surety was one for payment; that the sons of the surety were liable under Hindu law for the payment and that it made no difference that

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* Appeal No. 80 of 1917.