

revoke his authority can admit of no doubt, although the statement by Sirkar that he may revoke it "at any time *before adoption*" is somewhat misleading, as any adoption by the widow must necessarily be only after the husband's death and at that time no question of revocation by him can possibly arise (Sirkar's Hindu Law of Adoption, 2nd Edition, page 237).

In the result, the appeal is dismissed with costs of the second respondent.

V.V.C.

SIVASURYA-
NARAYANA
v.
AUDI-
NARAYANA.

APPELLATE CIVIL.

Before Mr. Justice Pandrang Row and Mr. Justice K. S. Menon.

PULIYERI KUNHUKUTTAN *alias* KELU
(FIRST RESPONDENT), APPELLANT,

1936,
September 4.

v.

IMBICHIKUTTAN *alias* IMBICHIKUNHAN
AND THREE OTHERS (APPELLANTS AND RESPONDENTS 2 AND 3),
RESPONDENTS.*

*Malabar law—Stani—Stanom property—Kanam demise of—
Renewal by stani of, before expiry of its period—Validity
of—Renewal to take effect on date of renewal itself.*

A renewal of a kanam demise, four years before the expiry of the period thereof, but to take effect on the date of the renewal itself, executed by a stani in respect of stanom property is valid and binding on the stanom, even in the absence of proof of a valid necessity for such a renewal, provided there is no fraud or other circumstance vitiating the transaction.

APPEAL under Clause 15 of the Letters Patent against the judgment of VARADACHARIAR J. in

* Letters Patent Appeal No. 75 of 1935.

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Second Appeal No. 3 of 1931 preferred against the decree of the Court of the Subordinate Judge of South Malabar at Calicut in Appeal Suit No. 164 of 1929 preferred against the decree of the Court of the District Munsif of Calicut (Additional) in Original Suit No. 1009 of 1926.

The suit was for redemption and was brought by the plaintiff as assignee of a melkanam granted by the fourth defendant in December 1923. The plaintiff sued on the footing that the defendants were in possession under Exhibit A, a kanam of 1910. The defendants however maintained that they were in possession under a renewal (Exhibit III) granted in October 1918 by the fourth defendant's predecessor. The validity and binding character of that renewal (Exhibit III) was the main question in dispute between the parties in the Courts below. Issue 4 raised the question whether the renewal was tainted by fraud and collusion. The District Munsif found against the suggestion of fraud and collusion but the lower appellate Court did not deal with it. Issue 2 raised the general question of the validity of Exhibit III. The defendants contended in the alternative that Exhibit III had been ratified by the fourth defendant; and that question was raised by issue 5. The Courts below found against the validity of Exhibit III. On the question of ratification, the first Court decided in favour of the defendants and dismissed the suit, but the lower appellate Court reversed that finding and accordingly decreed the suit. In second appeal, VARADACHARIAR J. held in favour of the validity of Exhibit III, reversed the decree of the lower appellate Court and restored that of

the District Munsif. His Lordship found it unnecessary, in the view which he took of the validity of Exhibit III, to deal with the question of ratification.

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K. P. Ramakrishna Ayyar for appellant.

K. Kuttikrishna Menon and *K. N. Kumaran* for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by K. S. MENON J.—This is an appeal against the judgment of VARADACHARIAR J. in Second Appeal No. 3 of 1931. The facts are all set out in the first paragraph of that judgment and it is unnecessary to repeat them. The only question for decision is whether Exhibit III, a renewal of the kanam demise Exhibit A four years before the expiry of the period under the latter, but to take effect on the date of the renewal itself, executed by a predecessor of the fourth defendant, who was the then stanom holder, to the father of defendants 1 and 2, in respect of properties appertaining to the stanom, is valid and binding on the stanom, in the absence of proof of a valid necessity for such a renewal. Our learned brother, preferring to follow the trend of recent decisions of this Court, the last of which is Civil Miscellaneous Appeal No. 406 of 1928, to that reported as *Vatavatta Nair v. Kenath Puthen Vittil Kuppas-san Menon*(1), held that it was valid. Mr. K. P. Ramakrishna Ayyar for the appellant, relying on the decision in *Vatavatta Nair v. Kenath Puthen Vittil Kuppas-san Menon*(1), contends that considerations which arise in deciding the question of the

(1) (1918) 36 M.L.J. 630.

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validity of such renewals are the same whether such a renewal is to take effect at once or on the expiry of the period under the prior demise. In this we are unable to agree with him. This question was gone into elaborately by the learned Judges who decided Civil Miscellaneous Appeal No. 406 of 1928 and they came to the conclusion that the two sets of cases are governed by entirely different considerations. As we agree with the conclusion arrived at in that case and generally with the reasons, it is unnecessary to enter into a lengthy discussion here. In the case of a renewal to take effect at once, there is an implied surrender and a grant of a fresh demise. It is certainly open to a tenant, a kanamdar, to surrender the unexpired portion of his term. The landlord or the stanom holder is no doubt not bound to accept such a surrender. But there is nothing in law to prevent him from accepting it, provided of course there is no fraud or other circumstance vitiating the transaction. Once the surrender is accepted, the stanom holder has, in the ordinary course of management of stanom properties, the right to lease the property for the customary period or demise it on nominal kanam for the usual period of twelve years, provided the terms of such leases or kanam demises are not onerous or otherwise to the detriment of the stanom. It is immaterial whether the new demise is granted to the same person or a stranger or whether it is granted the same day or a few days or months hence. In this case, the amount of kanam in Exhibit III is the same as in Exhibit A and is only nominal, being only Rs. 10, and the rent reserved in the renewed demise is the same

as in Exhibit A. The renewal cannot therefore be said to be less beneficial to the stanom. But Mr. K. P. Ramakrishna Ayyar contends that, as the income from the stanom properties including the renewal fees is the absolute property of the stanom holder for the time being, the grant or renewal by one stanom holder before the expiry of the term under the prior demise would be prejudicial to the person who will happen to be the holder of the stanom at the time the prior period expires, inasmuch as he will be deprived of the renewal fees, and that the principle of the decision in Civil Miscellaneous Appeal No. 406 of 1928 does not apply to dealings in respect of stanom properties by a stanom holder. But once it is granted that it is within the ordinary powers of management for a stanom holder to grant leases for twelve years and to demise on nominal kanam for twelve years and not merely to enure during the lifetime of the stanom holder, this argument loses all its force, and it is not disputed before us that he has such powers. There is no reason, therefore, for not applying the principle of the decision in Civil Miscellaneous Appeal No. 406 of 1928 to cases of renewals by stanom holders of demises in respect of stanom properties as well, which take effect from the dates of such renewals. The appeal is therefore dismissed with costs.

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 ———
 K. S. MENON J.