

1863.
March 21.
S. A. No. 101
of 1862.

Tirumalachariyar for the respondent, the second defendant, contended that the suit was premature.

PER CURIAM.—We think that an otti like a kánam mortgage cannot be redeemed before the lapse of twelve years from the date of its execution. An otti, in fact only differs from a kánam in two respects. First, in the right of pre-emption which the otti-holder possesses in case the janmi wishes to sell the premises, and, secondly in the amount secured, which is generally so large as practically to absorb in the payment of the interest, the rent that would otherwise have been paid to the janmi, who is thus entitled to a mere pepper-corn rent.

Appeal dismissed.

ORIGINAL JURISDICTION. (a)

Special Appeal No. 279 of 1862.

UKANDA VARRIYÁR.....*Appellant.*

RÁMEN NAMBU DIRI.....*Respondent.*

When the uralans of a devasvam were four tarawáds : *Held* that a sale of the uráyáma right by one tarawád without the consent of the others was altogether invalid and that the vendee could not redeem a kánam mortgage of the devasvam land though the mortgagor was káranavan of the tarawád which assumed to sell the uráyáma right.

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THIS was a special appeal from the decree of H. D. Cook, the Civil Judge of Calicut, in Appeal Suit Nos. 116 and 117 of 1860. The plaintiff sued to redeem lands of the Karuvambalom devasvam, which lands had been demised on kánam by one Shangara Nambudiri deceased, the Káranavan of the third and fourth defendants to the káranavan of the first and second defendant. The third and fourth defendant's tarawád, subsequently sold the uráyáma right to the plaintiff. It appeared that there were four uralans of the Devasvam, the tarawád of the third and fourth defendants, and the tarawáds of the fifth, sixth and seventh defendants respectively, and the question was whether the plaintiff could redeem the kánam. The District Munsif held that he could, and decreed accordingly; but on appeal the Civil Judge recorded his decree, observing "There are in this case two points to be considered:—First

(a) Present : Strange and Frere, J. J.

can the sale of the third and fourth defendants' uráyama right to the plaintiff be recognized; secondly, if so, is the plaintiff in virtue of that sale entitled to sue alone for restoration of the lands demised by the late Shangara Nambudiri? As regards the first point the Court is of opinion that such a sale cannot be recognized. An uráyama right is nothing but a right to manage the affairs of a devasvam, and it generally descends by inheritance as is the case here, and [in the present case] the right is not vested in one individual, but in four different tarawáds, all having a joint right to deal with the devasvam, but not to do so separately; in short it is a *corporation* to manage the affairs of the pagoda vested in certain families, and being so any one member thereof cannot sell what is not exclusively vested in himself. Therefore a sale of this nature is not only opposed to local usage, but is in the Court's opinion invalid.

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"But on the hypothesis that the sale was legal there can be no doubt of the illegality of the plaintiff bringing this action alone for restoration. Admitting that Shangara Nambudiri demised the lands in his executive capacity as urálan, this does not vest him with the right to sue for redemption, this must be the act of the urálans together; and this is clearly set down in the document A on which the suit is based—the meaning of this document has not struck the Munsif's attention.....Being of opinion therefore that the plaintiff has no case, and as the record does not prove that the affairs of the devasvam were exclusively managed by Shangara Nambudiri, the plaintiff—even if the sale were upheld—has no right to sue without the others."

The plaintiff now repealed specially.

Mayne for the appellant, the plaintiff.

Karunagara Menavan for the respondent, the fifth defendant.

PER CURIAM.—We concur with the Civil Judge in thinking that the sale of the uráyama right by one tarawád, without the consent of the others, was invalid. It follows that the vendee cannot redeem the kánam even though the person who executed that kánam was káranavan of the very tarawád which assumed to sell the uráyama right.

Appeal dismissed.