

APPELLATE JURISDICTION (a)

*Special Appeal No. 380 of 1862.*EDATHIL ITTI and others *Appellants.*KOPASHON NÁYAR *Respondent.*

A káranavan singly may make an otti mortgage.

Sembla, otti mortgage cannot be redeemed until after the lapse of twelve years from its date.

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THIS was a special appeal against the decree of H. D. Cook, the Civil Judge of Calicut, in Appeal Suit No. 1 of 1861, reversing the decree of the District Munsif of Palghát, in Original Suit No. 172 of 1858. The lands, the subject of the suit, were the janma property of the tarawád of which the first and second plaintiffs and the fourth defendant were members. In 1843 their then káranavan demised the lands to the káranavan of the first, second and third defendants on a kánam of 1,000 panams. In 1857-58 the first and second plaintiffs and the fourth defendant against the land on Melkánam to the third plaintiff, and at the same time directed the first defendant to give up the lands, together with the Michaváram, to the third plaintiff. The object of the present suit, which was commenced on the 7th of April 1858, was to compel the surrender of the lands to the plaintiff on payment by him of the 1,000 panams.

The first, second and third defendants admitted the demise on káman, but pleaded that in 1859 the fourth defendant (who had in the meantime become káranavan of the first and second plaintiffs) executed an otti mortgage of the premises to the third and fifth defendants, that the land were now held under that mortgage, and that those defendants could not be ousted within twelve years from the date thereof.

The District Munsif of Palghát, suspecting the genuineness of the otti mortgage, decreed in favour of the plaintiffs. The Civil Judge held the otti deed valid and reversed the Munsif's decree. The plaintiffs now appealed against this reversed.

Karunagara Manavan for the appellants, the plaintiffs cited *Special Appeal No. 44 of 1855.*

Miller for the respondent, the first defendant.

(a) Present Scotland; C. J. and Strange, J.

SCOTLAND, C. J.—The question raised is one purely of local usage. The plaintiffs contend that the fourth defendant, the káranavan of the first and second plaintiffs, had no power *singly* to create an otti-right ; for that this in effect amounted to an absolute sale. If that were so, the objection would be well founded, for a sale of family property in Malabar requires that the senior anandravan should (if *sni jaris*) concur in the conveyance. But though after an otti-right is granted, little or nothing is left to the janma proprietor, he has still a distinct right to redeem, and the transaction must therefore be regarded as a mortgage, and not as an absolute sale. If, then, an otti-right is a mortgage-right, a káranavan may singly create it for proper reasons, which, of course, we must assume to have existed in the present case.

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Then it is said that the property is *sthánam*, and could not therefore be alienated so as to bind the successor. But this point cannot be raised on this special appeal, for there was no evidence that the premises were *sthánam*.

Lastly, a question was raised by the plaintiffs' *vakil* as to whether the plaintiff should not now be allowed to redeem. We might get rid of this on the ground that an otti-right entitles the mortgagee to hold without redemption for twelve years from the date of the mortgage : Mr. Justice Strange is strongly of opinion that this is so, and I have no doubt that he is right. But we ought not in giving a decision to travel out of the four corners of the case. And as the facts do not sufficiently raise the question, which is one purely of local usage, it is enough to say that the plaintiff cannot now be allowed to maintain that he is entitled to a decree in this suit for redemption of the otti mortgage.

STRANGE, J. concurred.

Appeal dismissed.

NOTE.—In *Special Appeal No. 101 of 1862*, heard March 21, 1863, present Strange and Frere, J J., *Mayne* for the appellants, *Tirumalachariyar* for the respondents, the High Court expressly ruled that an otti mortgage was irredeemable before the lapse of twelve years from its date.