

**(1965) 06 KL CK 0016****High Court Of Kerala****Case No:** S.A 611 of 1961

Kandakka Sooppi

APPELLANT

Vs

Joseph

RESPONDENT

**Date of Decision:** June 17, 1965**Acts Referred:**

- Kerala Agriculturists Debt Relief Act, 1958 - Section 23

**Citation:** (1965) KLJ 723**Hon'ble Judges:** S. Velu Pillai, J**Bench:** Single Bench**Advocate:** D.A. Krishna Warrier, for the Appellant; C.K. Viswanatha Iyer, for the Respondent**Final Decision:** Allowed

### **Judgement**

S. Velu Pillai, J.

The respondent 6th defendant, assigned a property to the appellant's predecessor-in-interest by Ext. Bl dated the 31st March, 1957, and on the same day he executed a marupat Ext. Al, accepting a lease of the property. The appellant sued the respondent and others on the basis of Ext. Al for arrears of rent. The respondent contended, that by virtue of Section 23 of Act XXXI of 1958 Ext. Bl must be deemed to be a mortgage to which the provisions of Section 11 of the Act are applicable. This contention prevailed with the two courts below. In second appeal it was contended for the appellant, that Section 23 had no application. That Section reads :

Where under a sale deed in respect of immovable property there is provision to repurchase the property within any stipulated period on payment of any specified amount and such period has not expired at the commencement of this Act, then, notwithstanding any law or contract to the contrary, the transaction" shall be deemed to be a mortgage and the provisions of Section 11 shall apply thereto. The consideration for the sale shall be deemed to be the mortgage amount.

The basis of the contention was the provision in Ext. Bl, which reads:

Section 23 was contended to be inapplicable for two reasons, first, that no period is stipulated in Ext. Bl within which the payment is to be made as contemplated by the Section, the stipulation being, that the payment may be made at any time after the expiry of twelve years and second, that while the expression "such period has not expired" postulates the condition that the right of repurchase was in force or was current on the date of the Act, under the terms of Ext. Bl that right would accrue only in future and not earlier than the 31st March, 1959. In my view, the decision of the case must turn on the meaning of the term "within any stipulated period" the word "within" pointing to an outer limit of a specified period, the fixation of an inner limit, if I may say so, by itself, being insufficient. The term "within" according to the dictionary, means "not beyond." I look in vain for such a limit in the relevant provision in Ext. Bl quoted above. On the contrary, there is no such outer limit whatever, the right being exercisable at any time after the expiry of twelve years.

2. The implication of the term "such period has not expired at the commencement of the Act" is that the right of repurchase should have been in existence at the time, though by itself it may connote a future period with reference to the date of the Act; but that construction seems rather far-fetched. I find it impossible to get over the plain meaning of the words, "within any stipulated period." For these reasons, I am constrained to differ from the lower courts and to hold, that Ext. Bl is not a mortgage and is not liable to be discharged under the provisions of Act XXXI of 1958. The case will now go back to the trial court for the disposal of issue 4 relating to the amount realisable by the appellant and for passing a fresh decree. If the respondent relies on any of the provisions of Act I of 1964 which may be available to him in defence, this judgment shall not stand in his way. In the view I have taken, the appellant is entitled to the costs so far incurred in the three courts; the costs to be incurred hereafter will be provided for in the revised decree. This second appeal is allowed.

Learned Counsel for the respondent prays for leave to appeal; leave granted.