LAKSHMI v. ANANTA SHANBAGA.

to delay in making the application as a person who is not a pauper, yet, in making his application for leave to appeal, similar indulgence is not extended to him, the language of the Act precludes, we think, any other construction of it upon this question than that contended for, and under Section 4 of the Limitation Act it is necessary to dismiss the appeal.

We must dismiss it with costs.

APPELLATE CIVIL.

Before Mr. Justice Innes (Officiating Chief Justice) and Mr. Justice Muttusámi Áyyar.

1879. August 1.

VENKATÁCHALAM CHETTI (PLAINTIFF), APPELLANT, *v.* ANDIAPPAN AMBALAM AND 27 OTHERS (DEFENDANTS), RESPONDENTS.*

Land in possession of a tenant—Criminal trespass—Right of the landlord to sue.

Many of the tenures in India are in the nature of a partnership, in which he to whom the land belongs participates with the cultivators in the crop. Therefore the law of England, that a landlord who has parted with his possession to a tenant cannot sue in trespass for damage to the property, unless the wrongful act complained of imports a damage to the reversionary interests, does not apply to landlords in India.

THIS was an appeal against the decree of K. Krishnasámi Ráu, Subordinate Judge of Madura, in Original Suit No. 6 of 1877.

The plaintiff alleged that the land in dispute belonged to the Mahajanams of the village of Kalanivasal; that he acquired possession thereof in 1874 under an agreement and a mortgage instrument executed by the latter; that his tenants cultivated it for him; and that the defendants, in January 1876, trespassed on his property and wrongfully carried away the produce raised by his tenants in Fasli 1285 (1875-76). The plaintiff claimed Rs. 5,150-6-6 for damages for loss of produce. The defendants denied the plaintiff's right and that of the Mahajanams to possession of the property, and pleaded their right of occupancy. The plaintiff's tenants, who cultivated the land in Fasli 1285 (1875-76),

* Appeal No. 97 of 1878 against the decree of K. Krishnasámi Ráu, Subordinate Judge of Madura, dated 5th August 1878.

had executed muchalkas to him, agreeing to give him a specified portion of the produce for rent, and to make good any loss he might sustain by reason of their negligent cultivation. The Subordinate Judge found that the defendants did not prove the title which they set up, and that the Mahajanams were the owners of the property. He however dismissed the suit on the grounds that the plaintiff himself was not in possession of the property; that the tenants were the proper parties to sue for compensation for the loss of produce; and that the plaintiff had no right to sue, inasmuch as he did not allege that the defendants had done an injury of a permanent nature to his reversionary interest. The plaintiff appealed against the decree.

The *Advocate-General* for the Appellant.

A. Rámachandráyyar for the Respondents.

The Court (INNES and MUTTUSÁMI ÁYYAR, JJ.) delivered the following

JUDGMENT:—We think that in this case the Subordinate Judge has taken a wrong view of the nature of the tenancy. No doubt he has rightly stated the law as to trespass in the case of an ordinary English tenancy.

But if the reason of the law be considered, it will be found that, in regard to a very large proportion of tenancies in India, the rule must be different.

In England, the rule that a landlord who has parted with his possession to a tenant cannot sue in trespass for damage to the property, unless the wrongful act complained of imports a damage to the reversionary interest, rests upon the ground that the landlord has for the term of the tenancy parted with his interest, and that temporary damage, the consequences of which cannot be prolonged beyond the term of his tenancy so as to affect his reversionary interest, does not concern him.

Many of the tenures in India, however, are in the nature of a rtnership, in which he to whom the land belongs participates the cultivators in the crop. Under the Masalman rule this of tenure went by a name "Muzarant," which imported artnership, and there are indications throughout the case—eed the written agreement appears to us to go very far to w—that that was the nature of the relation between plaintiff l his so-called tenants. If this be so, the tenants should have

VENKATÁCHALAM CHETTI v. ANDIAPPAN AMBALAM.

been joined, as they would be entitled to share in the compensation or the damage. And we think it desirable that they should be joined as plaintiffs so as to give them an opportunity of protecting their interests in this suit. Without, therefore, expressing any decided opinion as to the exact relation of the present plaintiff to the tenants under the agreement with them, we shall set aside the decree of the Subordinate Judge and remand the suit, with directions that the tenants be made plaintiffs jointly with the present plaintiff and that the suit do proceed *de novo*.

The costs hitherto will be costs in the cause.

It is right to observe that the suit has been treated as a suit for damages for simple trespass, but although doubtless the trespass was intended to form an element in the wrong for which compensation was sought, the cause of action is stated to be the wrongful appropriation of the proceeds of the crop, and the relief sought to damage for the loss of produce wrongfully taken away.

The suit therefore would appear to be substantially a suit praying for redress, not only for the trespass, but for the wrongful conversion of the produce.

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Muttusámi Áyyar.

1880. January 5. THE ZAMINDÁR OF RÁMNÁD (PLAINTIFF), APPELLANT, *v.* RÁMAMANY AMMÁL AND 6 OTHERS (DEFENDANTS), RESPONDENTS.*

Grant of a maganam by a Zamindár to be held in perpetuity by the grantee—Poruppu or rent due to the Zamindár—Maganam in the hands of different individuals—Apportionment of rent.

The rent due to a Zamindár from the grantee of a *maganam* or division of the zamindári is not a charge upon the *maganam*. It is a debt due to the Zamindár and nothing more.

When the Zamindár instituted the suit for rent the *maganam* was in the possession of third parties, who had become owners of different portions of it by purchase. The Zamindár sought to make all of them jointly and severally liable for the entire amount of rent due to him. The Lower Court apportioned the rent upon the

* Appeal No. 22 of 1879 against the decree of K. Krishnasámi Ráu, Acting Subordinate Judge of Madura, dated 27th September 1878.