

## APPELLATE CIVIL.

Before Sir Charles A. Turner, Kt., Chief Justice, and Mr. Justice Kindersley.

UMMER KUTTI (FIRST DEFENDANT), APPELLANT, v. ABDUL KADAR AND ANOTHER (PLAINTIFF AND SECOND DEFENDANT), RESPONDENTS.\*

1880.  
January 12.

*Limitation—Act IX of 1871—Mortgage—Receipt of rent not payment of interest.*

In 1858 land was mortgaged to the plaintiff with possession for a term of five years, and in 1861 the defendant, the mortgagor, took a lease of the land from the plaintiff, under which he paid rent until 1870-71. The mortgage debt was repayable on the expiry of the term. Plaintiff brought the suit out of which this appeal arose to recover the debt from the mortgagor. It was pleaded that the suit was barred by limitation, to which plaintiff replied that the receipt of rent was in fact a payment of interest, and that from the last payment of interest a new period of limitation arose. *Held* that, the case being governed by the provisions of Act IX of 1871, the payment of rent under an agreement entirely independent of the original mortgage could not be regarded as a payment of interest.

PLAINTIFF, the younger brother of the second defendant, sued in 1877 for recovery from the defendants personally and by sale of property mortgaged, of Rs. 1,394-10-1, being his half share of the estate of their deceased father Malikahmed, consisting of a Kánam purankadom of Rs. 1,700 on land situated at Cannanore, granted by the first defendant and his deceased brother, and of the rent due therefrom for a period of seven years by first defendant as tenant in possession under a lease of the mortgagee Malikahmed, granted 25th April 1861.

The first defendant contended that the Kánam claim due by him to the deceased Malikahmed was only Rs. 1,000, and was granted in 1857-58 or 1858-59; that no purankadom was granted as alleged in the plaint; that the plaintiff's claim was barred by the Act of Limitation.

The second defendant supported the plaintiff.

The District Munsif decreed payment by first defendant of Rs. 1,051-7-2 out of the sum sued for within three months from the date of the decree, and in default the sale of the property

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\* Second Appeal No. 541 of 1879 against the decree of S. T. McCarthy, Acting District Judge of North Malabar, dated 21st July 1879, modifying the decree of the District Munsif of Chavacherry, dated 20th March 1878.

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mortgaged, and directed the sale-proceeds to be applied in payment of what should be found due to plaintiff.

On appeal the District Judge agreed with the Munsif in finding that the suit was not barred by the Law of Limitation, but modified his decree as to the amount payable by the first defendant, declaring him liable for rent for the three years preceding the institution of the suit.

The first defendant presented a second appeal to the High Court on the grounds that the plaintiff's suit was barred by the Law of Limitation, and that there was no payment of interest as such within the meaning of Section 21 of Act IX of 1871.

Mr. *Shepherd* for the Appellant.

A. *Rámachandráyyar* for the first Respondent.

The Court (TURNER, C.J., and KINDERSLEY, J.) delivered the following

JUDGMENT :—This suit is governed by the provisions of Section 21, Act IX of 1871. It appears that in 1858 land was mortgaged to the plaintiff, with possession for a term of five years, and that in 1861 the defendant, the mortgagor, took a lease of the land from the plaintiff, under which he paid rent until 1870-71. The mortgage debt was repayable on the expiry of the term. The plaintiff now sues to recover the debt from the mortgagor personally and by a sale of the property. It is pleaded the suit is barred by limitation, to which the plaintiff replies that the receipt of rent was in fact a payment of interest, and that from the date of the payment of rent a new period of limitation is given for the recovery of the debt. Under the present law this may be so if it be held that payment of rent by the mortgagor is such a receipt of produce in virtue of a usufructuary mortgage as is to be deemed equivalent to a payment of interest; but this provision is not to be found in Act IX of 1871, and although, if the payment of rent had as part of the original agreement or otherwise been agreed on as a provision for the interest in the debt, we might have held it fell within the narrower terms of Act IX of 1871, yet, in the circumstances of the present case, it is impossible, in our judgment, to hold that the payment of rent under an agreement entirely independent of the original mortgage, can be regarded as a payment of interest as such. The

appeal is in part decreed. The decrees of the Courts below, so far as they decree the claim, must be reversed, except in so far as they award the claim for arrears of rent for three years. Proportionate costs in all Courts.

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## APPELLATE CIVIL.

*Before Mr. Justice Kernan and Mr. Justice Forbes.*

· KUNJUNNERI NAMBIAR (THIRD DEFENDANT), APPELLANT, v.  
· NILAKUNDEN (PLAINTIFF), RESPONDENT.\*

1880.  
November 10.

*Suit—Karaima Samudáyam—Uralers.*

Plaintiff, alleging himself to be “Karaima Samudáyam” of the Malamal Ayyappan Dévaswam, sued to redeem lands which had been mortgaged by the Dévaswam. *Held* that he was not entitled to maintain the suit; that the Uralers are the persons in whom the estate and property of the temple is vested, and that the plaintiff was an agent accountable to the Uralers and subject to be dismissed by them for misconduct.

THIS suit was brought to redeem a mortgage of certain lands in Malabar, the property of the Malamal Ayyappan Dévaswam. The plaintiff alleged himself to be the Karaima Samudáyam (hereditary manager) of the dévaswam.

The District Munsif in his judgment dismissing the suit made the following observations:—“The plaint alleges that plaintiff is the Karaima Samudáyam of the Malamal Ayyappan Dévaswam.

“The mortgage documents sued upon recited the word ‘Samudáyam,’ but make no mention of the word ‘Karaima Samudáyam.’ The plaintiff has stated in his deposition that it has been the practice for thirty years to insert in documents the words ‘Karaima Samudáyam.’ If a practice which was not in existence thirty years ago has since been begun, it is necessary that there should be some special documentary authority from the Uralers. The plaintiff does not allege or produce any such document.” . . . . . “The single fact that members of the plaintiff’s house have as Samudáyam looked after the business of the Malamal Ayyappan Pagoda is not sufficient to establish the Karaima Samudáyamship of the house.

\* Second Appeal No. 482 of 1880 against the decree of T. V. Ponnusámi, Subordinate Judge of South Malabar, dated 8th March 1880, reversing the decree of the Court of the District Munsif of Kutnád, dated 22nd December 1879.