being, and if he grants a lease or makes an alienation to enure beyond his lifetime, which is for the benefit of the family, that will be upheld, as, on the other hand, any such transaction, if prejudicial to the family, will be set aside.

All that was held in the case of the Zamindar of Yettiapuram (8 M. I. A., 327) was that the grant of a permanent lease was not such an alienation as would be defeated for want of registration within the meaning of Section 8, Regulation XXV of 1802 (Madras). That such a grant is an alienation cannot be doubted, as it puts it out of the grantor's power for ever to obtain a more favourable rent from the property. In an improvingCountry like Malabar, such a grant may be highly prejudicial to the estate, but, in the present instance, the recognition of it by no less than eight successive Stanom-holders is strong evidence upon which the Courts might properly find that the grant is not injurious to the estate, and they have so found. It is unnecessary, therefore, to consider the further point whether the plaintiff is barred, but we think it right to observe that we could not accede to the doctrine of the Subordinate Judge that a holding for twenty years at an unchanged rent on a tenancy which is not shown to be anything more than a tenancy for the life of the grantor could give a right to hold for ever at that rent. The right to which the Subordinate Judge refers arises out of Bengal Act X of 1859. It is a statutory right which does not apply in Madras, where, even in the case of occupancy tenants, the right to raise the rent is regulated by Section 11, Act VIII of 1865. We dismiss the appeal with costs.

NOTES.

[I. STANOMDAR—ALIENATION BEYOND HIS LIFE—

A Stani in Malabar is not a mere tenant for life impeachable for waste. A lease of forest land is not invalid merely because it enures beyond his life-time:—(1897) 21 Mad. 144.

II. TRUSTEE OF A MALABAR DEVASAM—

Was held entitled to sue to set aside an *improper* alienation by his predecessor in office and to recover them for the trusts of the Devasam:—(1890) 13 Mad. 402.

See also 6 M. L. J. 270; 9 M. L. J. 93.]

[150] APPELLATE CIVIL.

The 12th September, 1881.

PRESENT:

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Ryrappan Nambiar.....(Defendant), Appellant

and

Kelu Kurup.....(Plaintiff) Respondent*.

Malabar law—Self-acquired property—Assets for payment of debts of deceased acquirer in hands of tarwad.

The self-acquired property of a member of Malabar tarwad, which, not being disposed of at the death of the acquirer, lapses into the property of the tarwad, enures as assets of the deceased for the payment of his debts in the hands of the members of the tarwad.

* Second Appeal No. 205 of 1881 against the decree of J. W. Reid, District Judge of North Malabar, modifying the decree of C. Gopalan Nair, District Munsif of Badagara, dated 6th November 1880.

THE facts and arguments in this case sufficiently appear in the Judgment of the Court (INNES and MUTTUSAMI AYYAR, JJ.).

Mr. *Spring Branson* for Appellant.

Ramachandrayyar for Respondent.

Judgment:—The defendants were sued as representatives of the deceased *Unni Nambiar*, who had died indebted to the plaintiff. The plaintiff sought to recover the debt from defendants as heirs of *Unni Nambiar* and as being in possession of his property. The District Munsif dismissed the claim against the defendants personally as he considered that it was not shown that they had possession of any property of *Unni Nambiar*, but decreed that plaintiff should recover the amount sued for against certain property which he found had belonged to *Unni Nambiar*, viz., the *Thappoil* Nilom (land) and its *Kuni*, and any other property which in execution of the decree might be shown to be property left by *Unni Nambiar*.

The plaintiff appealed to the District Judge on the ground that he was entitled to a decree against the defendants personally as there was evidence that the debt was incurred for tarwad necessity ; that the deceased, *Unni Nambiar*, had private property ; and that defendants had enjoyed it.

The District Judge found that one of the three claimed pieces of landed property named *Keloth* Paramba had been the property of **[151]** *Unni Nambiar*, and modified the Munsif's decree by declaring that also liable in execution to satisfy the debt.

The defendants appeal to the High Court on the ground that plaintiff failed to establish that *Keloth* Paramba was the private property of *Unni Nambiar*, but that, if it was so, on his death undisposed of, it fell into the tarwad property and became exempted from liability to satisfy any but tarwad debts.

It is found as a fact upon the evidence in the case that the property in question was the self-acquisition of *Unni* undisposed of at his death. It therefore fell into the tarwad property. The question is whether, though now tarwad property, it can be held liable to satisfy the personal debt of *Unni*. In *Kallati Kunju Menon* v. *Palat Erracha Menon* (2 M. H. C. R., 162) Mr. *Mayne*, who appeared for the special appellant in that case, is represented as having cited a note of an unreported decision in Special Appeal No. 378 of 1863 by PHILLIPS and HOLLOWAY, JJ., in which it was laid down that " self-acquisitions of land by a member of a tarwad are his separate property during his life and may be charged by him for his personal debts. After his death they lapse into the tarwad property, but if accepted by the members, they carry their obligations with them."

The learned Judges would appear to have held that the property would be liable in the hands of the members of the tarwad to the extent to which it might have been charged by the acquirer in his lifetime. As it is so completely the acquirer's separate property that he might dispose of the specific property in his lifetime, it does not stand upon the same footing as property in which the other members of the family have co-ownership, and in which each coparcener can only dispose of his existing interest. Under the *Mitakshara* law it is so far the acquirers individual property that, though he dies undivided from his co-parceners, his childless widow takes it. According to the decision of the Privy Council in the *Sivaganga* case (9 M. I. A., 543), it does not devolve by survivorship like coparcenary property, and the coparcener has no communion of interest

in it with his other coparceners. He is, as it were, divided from them in respect of it. If they take it by reason of his leaving no descendants and no widow, they take as heirs, not as coparceners. If this be so, such property would seem to enure as assets [152] of the deceased person for payment of his debts, and there appears no reason why the same principle should not apply in a family governed by *Marumakkattayam* law. We therefore hold that though the acquisition became tarwad property, it still remains liable for the debts of deceased *Unni Nambiar* in the hands of the members of the tarwad, and we dismiss the second appeal with costs.

NOTES.

[In the above case though the rule of succession in regard to the self-acquired property of a member of a Malabar tarwad, laid down in 2 M. H. C. R., 162, was accepted without question, still the principle of that decision, *viz.*, that such property passed to the tarwad by surivorship was departed from, for, the reasoning by which the conclusion is arrived at necessarily involve the position that such property devolves upon the tarwad not by survivorship as parceners, but by inheritance as heirs.

The principle that there is no survivorship with regard to the self-acquisitions of a member of a Malabar tarwad was more distinctly laid down in 22 Mad. 9 where a member's power to dispose of such property by will was ercognised.

But at the same time the rule of successoin laid down in 2 M. H. C. R., 162 was followed or accepted as correct in 12 Mad. 126; 10 M. L. J., 57, and other cases till it was ultimately confirmed by the Full Bench decision in 19 M. L. J., 350. The ruling in 2 M. H. C. R., 162 and the cases following it applied, however, in terms to the property of a male member of a tarwad, the rule of succession to the properyt of a female member of a tarwad came up for discussion in 24 M. L. J., 240 where a Full Bench laid down that the self-acquisition of a female member of a Marumakkatayam tarward does not lapse to the tarwad, but descends to her thavazhi.

Thus the law relating to this subject may be summarised as follows :—

(1) The self-acquired property of a male member of a Malabar tarwad goes to the tarwad in preference to the Thavazhi.

(2) The self-acquired property of a female member of a tarwad goes to the thavazhi in preference to the tarwad.

(3) In either case, the property descends not by survivorship, but by inheritance.]

[4 Mad, 152,]

APPELLATE CIVIL.

The 13th September, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Karuppa Thevan.....(Plaintiff), Appellant

and

Alagu Pillai and others.....(Defendants), Respondent.*

Hindu law—Invalid alienation by widow in favour of son-in-law—Mortgage by son-in-law—Suit by mortgage against sons of mortgagor—Independent reversionary title qua daughters sons.

*Second Appeal No. 136 of 1881 against the decree of Arunachella Ayyar, Subordinate Judge of SouthTanjore confirming, the decree of A. Anugraham Pillai, District Munsif of Pattukotai, dated 2nd November 1880.