

to execute the decree already passed in original suit No. 137 of 1870; but the clause in the plaint which contains the prayer is open to the construction that it prays for relief similar to those in the former decree. I would, therefore, set aside the decree of the Judge and remand the case for disposal on the merits. The costs incurred in this Court will abide and follow the result and be provided for in the revised decree.

BHAGIRATHI
v.
ANANTHA
CHARIA.

APPELLATE CIVIL.

Before *Mr. Justice Muttusami Ayyar* and *Mr. Justice Best*.

ACHUTAN NAYAR (DEFENDANT No. 4), APPELLANT,

1893.
November 8.

v.

KESHAVAN (PLAINTIFF), RESPONDENT.*

Mortgage—Right of a jenni, who is a judgment-creditor, to sell the kanom right before the expiry of twelve years.

A jenni, who has obtained a decree for arrears of rent, may sell the kanom before the expiry of twelve years: such a sale does not put an end to the kanom, but only transfers the kanomdar's interest to the purchaser at the execution sale.

SECOND APPEAL against the decree of A. Venkataramana Pai, Subordinate Judge of South Malabar, in appeal suit No. 374 of 1892, modifying the decree of J. F. Pereira, District Munsif of Angadipuram, in original suit No. 45 of 1892.

This was a suit to recover the sum of Rs. 63-14-2, being principal and interest on account of arrears of porapad for the years 1065, 1066 and a portion of 1067, alleged to be due by the defendants on a kanom kychit executed by the first defendant to plaintiff's elder brother, the late Neelakandan Musad, on the 7th Edavom 1048 (19th May 1883).

The plaintiff sued to recover the aforesaid arrears from first defendant personally, from the properties of first to third defendants' tarwad, and by the sale of the kanom and value of improvements on the properties demised.

Defendants 1 to 3 and 5 were *ex parte*.

The fourth defendant answered that the demise sued upon was

* Second Appeal No. 417 of 1893.

AGHUTAN
NAYAR
v.
KESHAYAN.

true; that the kychit simply provides for the payment of arrears of porapad with interest; that the value of kuyikoor improvements being an unascertained amount could not be sold for arrears of porapad; that first to third defendants and others mortgaged the plaint properties on a panayom right of 324 rupees and 528 paras of paddy to him (fourth defendant) on the 6th April 1884, and on a further panayom rights of 174 paras of paddy on the 18th April 1887; that these rights were admitted by the plaintiff in the matter of the execution of decree in original suit No. 70 of 1889; that, therefore, the kanom and the value of improvements were liable in the first instance for the above debts; that plaintiff could not have the kanom right sold before the expiry of twelve years allowed by the demise.

The District Munsif decreed in favour of the plaintiff, but dismissed the suit against the fourth defendant. The Subordinate Judge set aside the decree dismissing the suit as against the fourth defendant, and decreed that, in default of the defendants paying the amount awarded by the Lower Courts, the plaintiff should recover the same by the sale of the first to third defendants' interest as mortgagees under the plaintiff, free of the encumbrance created by the first defendant in favour of the fourth defendant, as well as from the first defendant personally, and from first to third defendants' tarwad properties.

The fourth defendant preferred this appeal.

Sankara Menon for appellant.

Kannan Nambiar for respondent.

JUDGMENT.—It is contended that the kanom right is not liable to be sold in satisfaction of the decree before the expiry of twelve years from the date of the kanom to first defendant. No doubt, according to the custom of the country, a kanom is, in the absence of a contract to the contrary, redeemable only after the expiry of the period of twelve years. But this custom cannot supersede the general rule of processual law that a judgment-creditor is entitled to attach and sell the judgment-debtor's property. It is not denied that an ordinary judgment-creditor, who is not the jenmi, would be entitled to bring the kanom right to sale even before the expiry of twelve years. We see no reason why a jenmi, who is a judgment-creditor, should be in a different position. The right to set off arrears of rent against the kanom debt and value of improvements when the kanom becomes redeemable is

an additional security for the benefit of the jenmi, but it does not follow that he cannot sell the kanom at an earlier date if he has obtained a decree for arrears of rent. Such sale will not ordinarily put an end to the kanom, but only transfer the kanomdar's interest, such as it is, to the purchaser at the execution sale. If the jenmi himself becomes the purchaser, he will be in no better position, except in that he will have a priority of claim as against fourth defendant's panayams for arrears of rent, one of the customary incidents of the kanom.

ACHUTAN
NAYAR
v.
KESHAVAN.

The decree of the Lower Appellate Court must be modified by striking out the words "free of the encumbrance created by first defendant in favour of fourth defendant." In other respects the decree is affirmed.

The cases referred to at the hearing, viz., *Achuta v. Kali*(1) and *Kanna Pisharodi v. Kombi Achen*(2) and *Unnian v. Rama*(3) are not in point, inasmuch as the question here did not arise in those cases.

Under the circumstances of this case we direct each party to bear his own costs of this appeal.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Shephard.*

SUBBAMMAL (PLAINTIFF), APPELLANT,

v.

HUDDLESTON AND OTHERS (DEFENDANTS), RESPONDENTS.*

1894.
March 7, 12.

Civil Procedure Code—Act XIV of 1882, s. 13—Court of competent jurisdiction.

The term 'competent jurisdiction' in section 13 of the Civil Procedure Code has regard to the pecuniary limit as well as to the subject-matter. There is no authority for the general proposition that the competency of one Court as compared with another is affected by the circumstance that in the one case an appeal lies in the first instance to the District Court and in the other directly to the High Court. *Misir Raghobardial v. Sheo Bulsh Singh*(4) cited and followed. *Vithilinga Padayachi v. Vithilinga Mudali*(5) qualified.

(1) I.L.R., 7 Mad., 547.

(2) LL.R., 8 Mad., 381.

(3) I.L.R., 8 Mad., 415.

* Appeal No. 66 of 1892.

(4) I.L.R., 9 Calc., 439.

(5) I.L.R., 15 Mad., 111.