

RAMASAMI
v.
SAMU.

within the stipulated time, the plaintiff was to be debarred of his right of redemption. Orders passed under section 93 are, in our opinion, merely supplementary to the decree under section 92, showing whether the terms of the decree have or have not been fulfilled. It is clear that in this case when the three months' time allowed in the decree had elapsed without payment being made, no extension of time for payment having been granted, the decree became a final decree without any further orders being required. That decree then being a final one after confirmation in appeal, the present suit being based on precisely the same cause of action as that suit is, of course, barred as *res judicata*.

The second appeal fails and is dismissed with costs.

APPELLATE CIVIL.

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

1893.
August 8.

KUNHAYEN HAJI (PLAINTIFF), APPELLANT,

v.

MAYAN (DEFENDANT No. 2), RESPONDENT. *

Transfer of Property Act—Act IV of 1882, ss. 108, sub-s. (e), 117—Agricultural lease—Lease of a coffee garden—Destruction of plants by fire—Voidability of lease.

The plaintiff was the assignee of the right and title of the lessor and the defendant was the lessee of a coffee garden, under an instrument which was held to constitute a lease of the coffee plants only. In a suit to recover the annual payment reserved under the lease, it appeared that the coffee plants had been destroyed by fire and the garden had been consequently abandoned by the defendant before the period to which the claim related :

Held, that the plaintiff was not entitled to recover.

Per cur : We are clearly of opinion that a lease of a coffee garden is not an agricultural lease within the meaning of Transfer of Property Act, § 117.

SECOND APPEAL against the decree of E. K. Krishnan, Subordinate Judge of North Malabar, in appeal suit No. 823 of 1891, reversing the decree of J. A. De'Rozario, District Munsif of Vytri, in original suit No. 41 of 1891.

The plaintiff sued as the assignee of the title and interest of

* Second Appeal No. 1624 of 1892.

defendant No. 1 by whom as it was alleged a portion of coffee estate held on kulikanapattam had been leased to defendant No. 2 in consideration of an annual payment which had fallen into arrears. The defendant No. 2 alleged that he had been admitted as a partner in the first defendant's share in the estate and that he was liable only for a proportionate part of the jemmabogam assessed thereon. This, he averred, he had paid up to 1883, when a conflagration occurred destroying all the coffee bushes on the estate, which had since been overgrown with thick jungle. The District Munsif held that the defendant No. 2 was nevertheless liable to the plaintiff and accordingly passed a decree as prayed. This decree was reversed on appeal by the Subordinate Judge and the plaintiff preferred this second appeal.

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Sankaran Nayar and *Ryru Nambiar* for appellant.

Sankara Menon and *Govindan Nambiar* for respondent.

JUDGMENT.—We are clearly of opinion that a lease of a coffee garden is not an agricultural lease within the meaning of section 117 of the Transfer of Property Act. It is argued that section 108 does not apply, because the money sought to be recovered is not rent and the property was not destroyed. Looking at the plaint and the karar B, we think the relation of lessor and lessee was asserted and in fact existed. It is rent which the plaintiff seeks to recover. It is not disputed that the whole of the plants situated in the part included in the karar was absolutely destroyed, and the second defendant in consequence abandoned the garden. If, as a matter of fact, the land only had been the subject of the demise it might be doubtful whether section 108, Transfer of Property Act, applied. But that is not the case. As far as we can gather from karar B the lease was of the coffee plants only. We think, therefore, the Subordinate Judge is right and accordingly dismiss the appeal with costs.