

OLIVER
v.
ANANTHA-
RAMAYYAN.

to tender a patta, and we, therefore, hold that the service contemplated in the first instance under section 39 could not be effected, and hence that the service by affixing a copy on a conspicuous part of the land was under the circumstances a good and valid service. The decree of the District Judge must be reversed and the appeal remanded to be disposed of on the merits. Appellant is entitled to costs of this appeal, and the costs in the Lower Appellate Court will abide and follow the result.

APPELLATE CIVIL.

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

KAMMARAN NAMBIAR (PLAINTIFF), APPELLANT,

v.

CHINDAN NAMBIAR AND OTHERS (DEFENDANTS), RESPONDENTS.*

Perpetual lease granted for consideration—Clause providing for forfeiture on rent being in arrears—Whether repayment of the consideration is a condition precedent to surrender of the lands.

Consideration paid for a lease is exhausted by the grant of the lease, and a tenant's forfeiture of the lease cannot, in the absence of a provision to that effect, operate so as to convert the original consideration into a debt, which must be paid before the forfeiture can be enforced.

SECOND APPEAL against the decree of A. Thompson, District Judge of North Malabar, in appeal suit No. 298 of 1892, confirming the decree of K. Ramanatha Iyer, District Munsif of Cannanore, in original suit No. 35 of 1892.

The defendants in this suit held lands on a perpetual lease (*Janma kozhu*), which provided that the lease should be forfeited if the defendants allowed the rent to fall into arrears. The rent fell into arrears, but since it appeared that the plaintiff's ancestor had received consideration for the lease, the District Munsif and the District Judge decreed that, although the defendants had forfeited the lease, the forfeiture thereof could not, by analogy to the ordinary *kanom*, be enforced, until the plaintiff had repaid the consideration.

* Second Appeal No. 206 of 1893.

The plaintiff preferred this appeal.

Ryru Nambiar for appellant.

Respondents were not represented.

JUDGMENT.—We do not agree with the Judge that, if the clause for forfeiture of the perpetual lease is enforceable, plaintiff is only entitled to a decree on refund of the consideration paid by the tenant at the time of obtaining the lease. Exhibit A contains no provision for such repayment, and an obligation to refund cannot be inferred from the clause for forfeiture.

In the case of a kanom referred to by the Judge, what is forfeited is the right to retain possession for the full period of twelve years, the liability to repay the debt being in no way affected. Whereas in the case of a lease the consideration paid for it is exhausted by the grant of the lease, and the tenant's forfeiture of the lease cannot operate to convert the original consideration into a debt.

This is the only point that has been argued for appellant, and respondents have not appeared.

We, therefore, allow this appeal and setting aside the decrees of the Lower Courts so far as they disallow plaintiff's claim to possession of the land, we decree that defendants do surrender the land to plaintiff and pay his costs throughout.

KAMMARAN
NAMBIAK
v.
CHINDAN
NAMBIAK.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

ALAGAPPA CHETTI (PLAINTIFF), APPELLANT,

v.

1894.
September 27.
October 2.

VELLIAN CHETTI AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Partnership—Sust by one member of an undivided Hindu family—Non-joinder of other persons interested in a family business.

In 1887 the plaintiff appointed the defendant to serve for three years as manager of a business in Moulmein, which was the business of the undivided Hindu family to which the plaintiff belonged. In 1893 the plaintiff, without joining the other members of his family, sued the defendant for damages for breach of the contract of service :

* Appeal No. 65 of 1894.