

half deduction that had been made in the total amount above referred to was wrong was taken in the appeal grounds to the Lower Appellate Court, but the objection was overruled by the Subordinate Judge without his noticing the true ground on which it was made. We are of opinion that the disallowance of half the amount found due for the improvements proceeded on an erroneous view of the law, and that there is nothing to justify it. We must, therefore, so far, allow this appeal as to direct that the sum of Rs. 757-13-9 disallowed by the Lower Courts be added to the amount decreed to the thirtieth defendant for kanopi and improvements. We are not prepared to rule that the data on which the value of the reclamation improvements was calculated were wrong in principle, and we dismiss this ground of appeal. The parties will bear their own costs in this and the Lower Appellate Court. Time for redemption is extended for three months from this date.

ACHUTAN
NAYAR
v.
NARASIMHAM
PATTER.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

VENKATAGIRI RAJAH (PLAINTIFF)

v.

RAMASAMI (DEPENDANT).*

1897.
October 15.

Rent Recovery Act (Madras)—Act VIII of 1865, s. 14—Suit for rent—Limitation.

When a tenant has executed a muchalka specifying the dates on which the various instalments of rent are payable, the period of limitation for a suit by the landlord for the rent is to be computed from such dates.

CASE stated under Civil Procedure Code, section 617, by T. Sami Ayyar, District Munsif of Ongole, in Small Cause Suit No. 243 of 1897.

The case was stated as follows :—

“ In Small Cause Suit No. 243 of 1897 on this Court’s file, the Rajah of Venkatagiri has instituted a suit against one of his tenants for recovery of rent amounting to Rs. 7-13-8, being the arrears with interest due for fasli 1303 which commenced from 1st July 1893 and ended with the 30th June 1894. The suit is

* Referred Case No. 18 of 1897.

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based on a muchalka in writing, executed by the defendant on the 31st March 1894, which stipulates for payment according to three kistbandies, the last of which fell on the 30th January preceding. The plaint was presented on the 30th June 1897.

“Defendant raises the contention that the suit is barred by limitation, as it has been instituted more than three years from the date of the prescribed kistbandies and more than three years from the date of the muchalka. It is argued for the plaintiff that, under the special rule of limitation provided by section 2 of Act VIII of 1865, he had a right to claim rent until the last day of the fasli and that in consequence he was entitled to take that as the starting point for limitation. In support of this argument, plaintiff’s pleader quoted *Appayasami v. Subba*(1). But in the later decision (*Sobhanadri Appa Rau v. Chalamanna*(2)), it has been distinctly held that the ruling in *Appayasami v. Subba*(1) only applies to the special proceedings authorized by section 2 of the Rent Recovery Act, and that it does not apply to a suit for recovery of rent. It is also laid down therein that the rule of limitation applicable to a suit of this kind is what has been provided for by article 110 of the second schedule to the Limitation Act. According to this article the period of limitation for such suits is three years calculated from the time when the arrears fell due. The question now is when did the arrears become due. Was it on the dates specified in the kistbandies, or was it on the date of the muchalka, or was it on the last day of the fasli year? There are no reported cases so far as I have been able to ascertain in which this question was expressly raised and decided. The only case which affords any clue for a decision of the question is *Sobhanadri Appa Rau v. Chalamanna*(2) above quoted. There the question as to the period from which time commenced to run alternated between the date of the kistbandies and that on which the landlord acquired the status to sue. Under section 7 of the Rent Recovery Act, the right to sue accrues on the exchange of pattas and muchalkas. If these had been exchanged without any hitch before the dates specified as kistbandies, it seems to me that the latter would furnish the starting point for limitation. If the exchange took place after date fixed for the kistbandies either by agreement or by the

(1) I.L.R., 18 Mad., 463.

(2) I.L.R., 17 Mad., 225.

force of a decree obtained under section 10, as it was in *Sobhanadri Appa Rau v. Ohalamanna*(1) then according to the *dictum* laid down thereby, time will begin to run from the date when the exchange has taken place. In this case the giving of a muchalka by the tenant was a voluntary act and it took place on the 31st March 1894. Though the kistbandies should in the natural course be held as fixing the dates when the arrears become payable, when the exchange of pattas and muchalkas takes place on a later date, it seems to follow from the decision referred to, that the date of the muchalka must be taken as the period from which limitation should be reckoned. The contract evidenced by the muchalka would further operate as an acknowledgment of the liability for rent provided by the kistbandies, and the date of the acknowledgment would, under section 19 of the Limitation Act, furnish a fresh starting point for limitation. On the whole, my opinion on the question submitted for decision is that time begins to run from the date of the muchalka. The only reason for my entertaining a doubt on the point is because the landlord has a right to tender patta until the last day of the fasli year and if he had done so, he would have been entitled to sue for the rent within three years of that date."

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The Acting Advocate-General (Hon. V. Bhashyam Ayyangar) and *Desikachariar* for plaintiff.

The defendant was not represented.

JUDGMENT.—According to the contract evidenced by the muchalka in the case before us the rent was payable in three instalments, and each instalment which remained unpaid on the date it ought to have been paid became at once an arrear (see section 14 of the Rent Recovery Act). Time began therefore to run from the dates specified in the kistbandi, that is, the dates on which the instalments fell due and not from either of the other dates mentioned in the reference.

(1) I.L.R., 17 Mad., 225.
