APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

1898. February 13.

RAMANADAN CHETTI (PLAINTIFF), APPELLANT,

v.

PULIKUTTI SERVAI AND OTHERS (DEFENDANTS, NOS. 1 TO 38 AND 1ST DEFENDANT'S REPRESENTATIVE), RESPONDENTS.*

Ejectment Suit—Title to relief completed pending a suit—Amendment of plaint.

A having leased land to B, sold it to C. Persons having trespassed, B offered no objection, and it was alleged that he was in collusion with them. C now sued before the expiry of the lease to eject the trespassers; the lease expired while the suit was still pending:

Held, that the plaintiff was not entitled to the relief sought and could not be permitted, on appeal, to amend the plaint by adding a prayer for a declaration of his reversionary right, although the acts of the defendants were such as to be prejudicial to his rights as reversioner.

APPEAL against the decree of C. Gopalan Nayar, Subordinate Judge of Madura (East), in Original Suit No. 40 of 1895.

This was a suit relating to property described in the plaint as eight items of land. In 1894 they were all the property of defendant No. 1. On the 1st of June in that year items Nos. 1 to 7 were sold by him to Sowmianarayana Ayyangar, who on the 8th leased them for a period of ten years to defendant No. 1, who gave item No. 8 as security for the rent. In the following month Sowmianarayana Ayyangar sold to the plaintiff items Nos. 1 to 7 and assigned to him his rights under the lease. The plaint after setting out these facts proceeded to state that certain of the defendants had unlawfully entered upon the property in collusion with the village raiyats (who were also joined as parties) with the intention of defrauding the plaintiff, and of creating evidence of title in themselves. It was also alleged that defendant No. 1 who had refused to join in the suit was in collusion with the other defendants intending to defraud the plaintiff of his right to a charge on item No. 8. The prayers of the plaint were as follows:—

"It is therefore prayed that a decree may be passed—

"1. Directing the defendants Nos. 2 and 3 and defendants "from the fourth to hand over the possession of the suit properties

* Appeal No. 161 of 1896.

"to plaintiff so that first defendant may enjoy items Nos. 1 to 7 for "Fasli 1305 alone on behalf of the plaintiff, and so that plaintiff may "enjoy them thereafter, and so that item No. 8 may be enjoyed "by first defendant subject to the plaintiff's security aforementioned.

"2. That the said defendants be restrained by a permanent "injunction from entering upon the said properties.

"3. That mesne profits from Fasli 1306 be paid to plaintiff "with interest.

"4. That costs of the suit with interest thereon be paid to "plaintiff.

"5. And that such further or other relief as the nature of the "suit may require be granted."

The suit was filed on the 15th of August 1895 while the lease to defendant No. 1 was still current. It however expired while the proceedings were pending. The Subordinate Judge passed a decree on the 13th of April 1896 dismissing the suit on grounds which are immaterial for the purposes of this report.

The plaintiff preferred this appeal.

V. Krishnasami Ayyar and *Srinivasa Ayyangar* for appellant.

The Acting Advocate-General (Hon. *V. Bhashyam Ayyangar*) and *Sundara Ayyar* for respondents Nos. 2 and 3.

Respondents Nos. 4 to 39 were not represented.

JUDGMENT.—The property in dispute in this case consists of 12 pangus or shares in an Inam village. The lands appertaining to the shares are in the occupancy of raiyats who own the Kudivaram right. The share-holders or Inamdars are the Melvaramdars and as such are entitled to take their share of the crops and enjoy the other incidents appertaining to the tenure. Admittedly, the plaintiff's vendor had, before the sale to the plaintiff, granted a lease of the shares in dispute to the late first defendant for Faslis 1304 and 1305. The present suit was instituted before the expiration of the term of the said lease and while it remained in force. The plaintiff claimed a decree for possession of the shares against the contesting defendants who, it was alleged, had ousted the first defendant, the lessee. On behalf of the defendants it was objected that the plaintiff's suit as framed was unsustainable, the lease being treated in the plaint itself as subsisting and valid. The Subordinate Judge overruled the objection. But we cannot agree with him, as he has overlooked the elementary rule that a plaintiff who seeks possession must show that at the date of the

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suit he was entitled to such relief (Cole on Ejectment, page 66). The observations of Sir Barnes Peacock in *Davis* v. *Kayee Abdool Hamed*(1) are a direct authority that in this country also a landlord in the position of the plaintiff could not sue to eject even a trespasser so long as the lease is outstanding. The case of *Bissesuri Dabeea* v. *Baroda Kanta Roy Chowdry*(2) cited by the Subordinate Judge does not lay down a rule to the contrary, and if it did, the decision could not be held to be sound. As we understand that case, the Court there only held that as the plaintiff had been deprived of the joint possession he had held with his nimhowladar he was entitled to be restored to such possession. Clause (*n*) of Section 108 of the Transfer of Property Act, on which also the Subordinate Judge relies no doubt imposes an obligation on the lessor to put the lessee in possession. But that provision certainly cannot be construed as affecting the rule of procedure that a plaintiff suing for possession must show that at the date of the suit he was entitled to that relief.

On behalf of the plaintiff, it was urged here that even if, at the date of the suit, the plaintiff's claim for possession was unsustainable, still as the term of the lease expired during the pendency of the litigation, the plaintiff might now be given a decree for possession, should his case be shown to be well founded on the merits. The cases of *Sakharam Mahadev Dange* v. *Hari Krishna Dange*(3) and *Sangili* v. *Mookan*(4) on which the learned pleader for the plaintiff laid stress in support of the above contention do not warrant the course suggested by him being adopted in cases like the present. If in suits for partition under the Hindu Law events occurring after the commencement of the action are to be considered in determining the rights of the parties, such cases must be treated as an exception to the general rule that the rights of parties must be ascertained as at the date of the action brought. (Compare the observations of Collins, J., in *Ruys* v. *Royal Exchange Assurance Corporation*(5).)

It seems to be clear therefore that the plaintiff's suit for possession was not maintainable in consequence of the existence then of the outstanding term under the lease to the late first defendant.

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(1) 8 W.R., (C.R.), 55 at p. 58.
(2) I.L.R., 10 Calc., 1076.
(3) I.L.R., 6 Bom., 113.
(4) I.L.R., 16 Mad., 350 at p. 353.
(5) [1897] 2 Q.B., 135 at p. 142.

It was next urged for the plaintiff that the dispossession of the first defendant was on a claim of title which was inconsistent with the plaintiff's right to the reversion and such relief as would protect that right might and ought to be given in this suit. The relief appropriate in such circumstances would be a declaration (Per Peacock, C.J., in *Womesh Chunder Goopto* v. *Raj Narain Roy*(1)). But as the plaint was framed upon an erroneous view of the plaintiff's rights, no declaration was prayed for with reference to the view of the matter just stated, and the case is not one in which the plaintiff should be allowed to amend at this stage of the litigation, especially because even after such an amendment the case cannot be decided in favour of the plaintiff without taking further evidence as to whether Exhibit C, which is the very first link in the chain of the plaintiff's title, was executed by the parties who are alleged to have executed it, but which evidence the plaintiff had failed to call without, so far as appears, any proper reasons for such omission.

In these circumstances there is no alternative left but to dismiss the suit on the preliminary ground stated above. The appeal, therefore, fails and is disallowed with costs.

APPELLATE CIVIL.

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

ITTAPPAN (PLAINTIFF), APPELLANT,

v.

PARANGODAN NAYAR AND OTHERS (DEFENDANTS), RESPONDENTS.*

1898. March 22.

Transfer of Property Act—Act IV of 1882, *s.* 59—*Oral agreement for kanom—Suit for ejectment by a jenmi.*

A jenmi in Malabar sued to eject a tenant, who proved by oral evidence that he had one year before suit paid to the plaintiff a sum of money as a renewal fee and the plaintiff agreed to demise the land to him on kanom for a period of twelve years :

Held, that, although no instrument has been executed and registered, the plaintiff was not entitled to eject the defendant.

(1) 10 W.R., (C.R.), 15 at p. 19. * Second Appeals Nos. 1646 and 1647 of 1896.