

dismissed the suit. The District Judge was of opinion that the patta required a modification, and directed that a new patta be given modified accordingly.

The defendant preferred this second appeal.

Pattabhirama Ayyar for appellant.

Krishnasami Ayyangar for respondent.

JUDGMENT.—We do not think that exhibit III is evidence of an implied undertaking by the plaintiff that he accepted the rates and terms of the patta, exhibit A.

But the second point urged that the suit was not brought within the fasli 1303 to which the patta relates is, we think, fatal to the suit. It has been held in *Venkatasami Naik v. Setupati Ambalam*(1) that a patta must be tendered by a landlord within the fasli for which rent is sought to be recovered, and we are of opinion that the same rule must apply to a tenant when he demands a patta from the landlord. This suit, being brought after the expiration of the fasli for which the patta was demanded, was therefore barred by time. On that ground only, we reverse the decree of the District Judge and restore that of the Deputy Collector. The plaintiff must pay the costs of the appellant in this and in the Lower Appellate Court.

KRISHNASAMI
MUDALIAR
v.
KRISHNA
MUDALIAR.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Boddam.

VIRU MAMMAD (DEFENDANT No. 17), APPELLANT,

v.

KRISHNAN AND OTHERS (PLAINTIFF AND DEFENDANTS Nos. 6,
7, 9, 11 AND REPRESENTATIVES OF DEFENDANT
No. 15), RESPONDENTS.*

1887.
November 3.

*Malabar Compensation for Tenants' Improvements Act (Madras)—Act I of 1887,
ss. 4 and 7—Improvements made before and after 1st January 1886.*

Malabar Compensation for Tenants' Improvements Act, 1887, section 7, cannot be construed retrospectively so as to invalidate agreements made with respect to improvements prior to the passing of the Act. In computing, therefore, the value of improvements made by a tenant in Malabar, who was let

(1) 7 M.H.C.R., 359.

* Second Appeal No. 1527 of 1895.

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into possession under an agreement before the passing of the Act, it is necessary to ascertain the value of improvements made by him before the 7th January 1887, calculated according to the scales specified in his contract, and also the value of improvements effected subsequently, calculated under the provisions of the Act.

SECOND APPEAL against the decree of the District Judge of South Malabar, in Appeal Suit No. 465 of 1893, modifying the decree of A. Venkataramana Poi, Subordinate Judge of South Malabar, in Original Suit No. 4 of 1892.

Suit to recover possession of land with arrears of rent. The plaintiff had demised the land in question to the predecessors in title of defendants Nos. 1 to 4 and 17 to 19. Defendants Nos. 5 to 15 were sub-kanomdars under them. The main question was as to the compensation for improvements to which the tenants were entitled. The Subordinate Judge passed a decree for the plaintiff, which was modified in appeal by the District Judge.

Defendant No. 17 preferred this second appeal.

Sundara Ayyar for appellant.

P. K. Subramania Ayyar for respondent No. 1.

Bhaskara Menon for respondents Nos. 2 and 4.

JUDGMENT.—With regard to the sixth defendant, the sub-kanom being prior to the 1st January 1886, the Act does not affect the validity of the contract thereby made. As between this defendant and the appellant the former can only be entitled to the compensation which the contract gives him.

As to the other defendants (now respondents) it is said that the bulk of the improvements must have been effected before the Act came into force, and that for the improvements effected before that date they are only entitled to be paid according to the rates stipulated in the sub-kanoms. It appears to us that section 7 of the Act cannot be construed retrospectively, so as to invalidate agreements made with respect to improvements prior to the passing of the Act. So far as the section relates to making improvements, it must refer to improvements to be made subsequently, and, this being so, it is difficult to construe the rest of the section as referring to improvements effected prior to the date of the Act. Section 4 does not refer to contracts.

It is necessary, therefore, to ascertain the value of the improvements made by each of the sub-demisees before the 7th January 1887, calculated according to the scales specified in the respective

contracts, and also the value of the improvements, effected subsequently, calculated under the provisions of the Act.

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We must direct the District Judge to return findings on these questions. Fresh evidence may be taken.

The findings should be submitted within one month from the date of the receipt of this order, and seven days will be allowed for filing objections after the findings have been posted up in this Court.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

REGO (PLAINTIFF), APPELLANT,

v.

ABBU BEARI (DEFENDANT), RESPONDENT.*

1897.
November
23.

Limitation Act—Act XV of 1877, sched. II, art. 134—Sale by mortgagee as owner.

A mortgaged land to B and then sold it to C, and subsequently sold it to B ignoring the previous sale. C now brought a suit for redemption and B, who had been in possession for many years, pleaded limitation :

Held, that the suit was governed by Limitation Act, schedule II, article 134.

SECOND APPEAL against the decree of H. G. Joseph, District Judge of South Canara, in Appeal Suit No. 353 of 1895, affirming the decree of O. Chandu Menon, Subordinate Judge of South Canara, in Original Suit No. 24 of 1894.

Suit to redeem a mortgage, dated 12th June 1862. The plaintiff, on the 4th October 1864, purchased the property from the mortgagors, who, however, in 1868, executed a conveyance of the same property to the mortgagee, who was the predecessor in title of the defendant who now pleaded limitation. The Subordinate Judge dismissed the suit, and his decree was affirmed on appeal by the District Judge, who held that the suit was barred by limitation.

The plaintiff preferred this second appeal.

Sankaran Nayar and Narayana Rau for appellants.

The Acting Advocate-General (Hon. V. Bhashyam Ayyangar) for respondent.

* Second Appeal No. 1224 of 1896.