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entitled to step into their shoes and to claim payment of his mortgage money out of the property originally mortgaged now in the hands of the second defendant, whose liability to pay the mortgage amount was established in the very suit in which the sale to him was upheld. The ground given in the Courts below for refusing to allow plaintiff's payment to be a charge upon the property was that the payment was not *bonâ fide*, and that it was not *bonâ fide* because it was made during the pendency of the suit between plaintiff and second defendant about the sale. We fail to see in this circumstance anything to affect the validity of the payment which was no doubt made by the plaintiff for the purpose of strengthening his own claim. The plaintiff's illegal act in antedating his sale deed also for the purpose of supporting his title does not vitiate the payment subsequently made, and which in itself was legal. There was, therefore, no want of *bonâ fides*, and certainly no fraud. We must accordingly allow the second appeal and direct that a decree for sale of the property be drawn up in the ordinary form for the sum of Rs. 1,084 with interest thereon at the rate of 12 per cent. per annum on Rs. 660 from the 11th March 1891 and on Rs. 424 from the 3rd March 1891 up to the date of the plaint, with 6 per cent. per annum thereafter until date of realization. The date for payment is fixed for the 7th March 1898. The second defendant must pay the plaintiff's costs on the above amount throughout. In other respects the decree of the Munsif is confirmed.

APPELLATE CIVIL.

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

1897. September 27. October 15.

ITTIRARICHAN UNNI AND ANOTHER (DEFENDANTS NOS. 1 AND 2), APPELLANTS,

v.

KUNJUNNI (PLAINTIFF), RESPONDENTS.*

Malabar Law—Powers of stani—Lease by stani of forest land attached to the stanom.

A stani in Malabar is not a tenant for life impeachable for waste. He is a person who represents the estate for the time being, and it is open to him to

* Second Appeal No. 426 of 1897.

make a lease of forest land for a term of years, and the mere fact that the alienation is intended to hold good after his lifetime will not invalidate it.

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SECOND APPEAL against the decree of H. H. O'Farrell, District Judge of South Malabar, in Appeal Suit No. 621 of 1895, reversing the decree of P. P. Raman Menon, District Munsiff of Nedunganad, in Original Suit No. 287 of 1894.

The facts of the case appear sufficiently for the purpose of this report from the following extract from the judgment of the District Judge:—

"The plaintiff is the appellant. He sued for an injunction and damages in respect of a felling lease executed by the first defendant in favour of the second. In the suit, as framed in the Lower Court, the plaintiff alleged that the first defendant was a stani; that he (plaintiff) was the next reversioner and that the acts complained of amounted to waste. The District Munsif held that plaintiff was merely an anandravan of an ordinary tarwad, and that if plaintiff were a reversioner of a stanom, the lease objected to was one within the ordinary powers of a stani to grant. There is no dispute that plaintiff has the right to sue either as reversioner to a stani or as anandravan of a tarwad, and the question of his status is not, in my opinion, material. The sole question is whether the act complained of amounted to waste? The lease in question grants to the second defendant the right to fell timber, except teak and blackwood and trees below 6 inches in girth, in a tract of forest 5 miles by 1½ miles for a consideration of Rs. 100. On the face of it the lease is of a most improvident character and practically authorizes the entire destruction of the forest. A karnavan, by Malabar Law, cannot dispose of the corpus of the property by an absolute sale without the consent of the anandravans, and if the defendant be a stani, he has still less powers in this respect. He is in the possession of a life-tenant and the powers of such have been well described by Sir G. Jessel M. R. in *Honywood* v. *Honywood*(1) cited and followed in *Dashwood* v. *Magniac*(2)."

The District Judge recorded a finding that the damage done was not less than Rs. 400 and added, "the plaintiff, however, who is merely a reversioner and not entitled to present possession, cannot have a decree for that amount. There is no Indian precedent, but the form of the corresponding decree in England may be gathered

(1) L.R., 18 Eq., 306. (2) [1891], 3 Ch., 306.

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from the concluding portion of the bill in *Hony* v. *Hony*(1)," and he passed a decree as follows :—" it is hereby ordered and decreed that defendants be and are restrained from cutting away timber from the plaint forest described in the schedule below, that defendants do pay into Court Rs. 400, the amount of damages and that Rs. 400 found due will be deposited in the name of the District Munsif of Nedunganad in trust in the suit in the Government Savings Bank and accumulated for the benefit of the person or persons who may be entitled thereto upon the death of defendant No. 1."

Defendants Nos. 1 and 2 preferred this second appeal.

Govinda Menon for appellants.

Ryru Nambiar for respondent.

JUDGMENT.—This is an appeal by the stani and his lessee against a decree obtained by the plaintiff as successor to the stanom. The effect of the decree is to restrain both the defendants absolutely from cutting the timber in certain forests, and to make the defendants liable in damages to the extent of Rs. 400, a peculiar direction being made as to the manner in which the money shall be treated. In the District Munsif's Court the plaintiff's suit had been dismissed on the ground that the lease was one which the stani was competent to give. This decree is reversed by the District Judge and the decree as abovementioned is framed on the strength of certain English cases cited by the Judge, in which the position of a tenant for life impeachable for waste was in question. There is, as has often been observed, great danger in applying English decisions on the law of real property to cases which arise in this country. To make the decision cited applicable, it must be assumed that the English law of waste has been adopted by the Courts of British India, that the defendant stani was a tenant for life, and further that he was a tenant for life impeachable for waste. No one of these assumptions can safely be made.

The position and powers of a stani have been often discussed. He is not a mere tenant for life, and he is certainly not impeachable for waste in the sense in which that expression is used in the English books. If it were true that a stani was in that position it would follow that he could not even cut down trees which were fit to cut or in a state of decay, without accounting for the proceeds

(1) 1 Sim & St., 568; s.c., 24 R.R., 236.

which would be treated as capital (see cases cited in notes to *Garth* v. *Cotton*(1)).

The decision of the Judge, founded as it is on considerations wholly foreign to the case, cannot be regarded as satisfactory. In any view the injunction in the terms in which it is granted could not be maintained, because it goes to the length of preventing the stani from making any use whatever of the timber. As, however, the stani has died it is necessary to pursue the question further except so far as it affects the other defendant. He is viewed by the District Judge as a simple wrong doer and, if it were true that the stani was a tenant for life impeachable for waste, this view might be correct. But the stani has, in truth, much larger powers than are attributed to him by the Judge. He is the person who represents the estate for the time being and enjoys much the same position as was assigned to the holder of an impartible zamindari before the current of decisions was turned in 1887 (see *Mana Vikraman* v. *Sundaran Pattar*(2)). It is certainly open to a stani to make a lease of forest land for a term of years and the mere fact that the alienation is intended to hold good after his life time will not invalidate it. Similarly it is competent to a stani to cut down forest trees for his own purposes, though by the manner and extent of his operations he may render himself liable to an action at the suit of the probable successor. It depends upon the circumstances of the case whether an alienation made by a stani or other conduct on his part in the management of his estate is of a character to render him liable to an action. In the present case, in order to make the lessee liable in damages, it would at least have to be proved that the acts done by him, would, if done by the stani immediately, have rendered him liable as for destruction of the inheritance. By the mere cutting of trees that being the ordinary and indeed the only way of enjoying the estate no injury is done of which, as between the stani and his successor, the latter has any right to complain. Considering that, as regards the lessee's liability, the finding of the Judge is vitiated by the erroneous point of view which he adopted and taking into account the extent of the forest and the comparatively small amount of timber cut, we hold that, on the facts stated, the decree for damages against him is not justified. As it stands, the decree relating to the damages is moreover

(1) 1 White & Tudor, 697. (2) I.L.R., 4 Mad., 148.

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unworkable. The District Judge, in adopting it from the prayer of a bill, has failed to notice that in order to make the decree complete directions would be required as to the persons to whom the interest on the sum invested or the sum itself should ultimately be paid.

We must set aside the decree against the surviving defendant and restore as regards him the decree of the District Munsif. The respondent must pay the second defendant's costs in this and in the Lower Appellate Court.

APPELLATE CIVIL.

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

1897. October 26.

RAMASAMI MUDALIAR (DEFENDANT), APPELLANT,

v.

RATHNA MUDALIAR (PLAINTIFF), RESPONDENT.*

Rent Recovery Act (Madras)—Act VIII of 1865, s. 8—Suit to enforce tender of patta—Suit brought after expiration of fasli.

A tenant is not entitled to bring a suit under Rent Recovery Act, 1865, section 8, to enforce the tender of a patta by his landlord after the expiration of the fasli to which the patta relates.

SECOND APPEAL against the decree of S. Russell, District Judge of Chingleput, in Appeal Suit No. 241 of 1895, modifying the decision of M. Srinivasa Rau, Deputy Collector of Chingleput, in Summary Suit No. 5 of 1895.

The plaintiff was the tenant of the defendant, and he sued under Rent Recovery Act, 1865, section 8, to enforce the tender by the defendant of a patta for fasli 1303. The plaintiff demanded a patta after the expiration of the fasli, viz., in August 1894, and instituted this suit in December of the same year. The defendant had tenderd to the plaintiff, on the 29th of June 1894, a patta which he refused to accept, alleging that it was not a proper patta which he was bound to accept. The Deputy Collector found that the patta tendered was a proper patta, and accordingly

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* Second Appeal No. 1538 of 1896.