

APPELLATE CIVIL.

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

ERESSA MENON (DEFENDANT No. 12), APPELLANT,

v.

SHAMU PATER AND ANOTHER (PLAINTIFF AND DEFENDANT
No. 1), RESPONDENT.*

*Malabar tenants' right to compensation for improvements—Compensation for
improvements and arrears of rent set off.*

As regards the right to the value of improvements, there is no distinction between a tenant under a kanom and under a vernumpattom.

The right of the landlord to set off against the value of the improvements any rent due to him must prevail against any alienation made by the tenant of his right to compensation.

SECOND APPEAL against the decree of A. Venkataramana Poi, Subordinate Judge of South Malabar, in Appeal Suit No. 325 of 1885, affirming the decree of P. Raman, Acting Additional District Munsif of Calicut, in Original Suit No. 645 of 1894.

The plaintiff sued to recover possession, together with arrears of rent, of certain land demised by him to defendant No. 1. The plaintiff admitted that certain improvements had been made by the defendant and offered to deduct their value from the arrears of rent. Defendants Nos. 2 to 9 were joined as being members of first defendant's tarwad. Defendants Nos. 12 and 14 were mortgagees from defendant No. 1, and they denied the plaintiff's right to credit the value of improvements against arrears of rent and claimed priority over the plaintiff's claim for rent. The District Munsif overruled the contentions of defendants Nos. 12 and 14 and, having assessed the value of improvements for which the plaintiff was charged for with compensation, passed a decree for surrender of the land. This decree was affirmed on appeal by the Subordinate Judge.

Defendant No. 12 preferred this second appeal.

Gorinda Menon for appellant.

Ryru Nambiar for respondent No. 1.

JUDGMENT.—So far as the right to the value of improvements goes, there is no distinction between a tenant under "kanom" and

* Second Appeal No. 1530 of 1896.

under "verumpattom." As pointed out in *Achuta v. Kali*(1), the right to receive such compensation becomes perfected only at the time of eviction, and subject to the customary incidents attending to the tenure. Consequently the right of the landlord to set off against the value of the improvements any rent due to him under the lease must prevail against any alienation made by the tenant of his right to compensation when it is in an inchoate state.

The second appeal therefore fails, and it is dismissed with costs.

ERESSA
MENON
v.
SHAMU
* PATTAR.

APPELLATE CIVIL.

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

PERIANNA GOUNDAN (PLAINTIFF), APPELLANT,

1897.
August 23.

v.

MUTHUVIRA GOUNDAN AND ANOTHER (DEFENDANTS),
RESPONDENTS.*

Limitation Act—Act XV of 1877, sched. II, art. 132—Suit on a hypothecation bond, dated 1876, to secure money payable on demand.

In a suit to recover principal and interest due on a hypothecation bond executed before the Transfer of Property Act was passed to secure a loan payable on demand, it appeared that the plaint was filed more than twelve years after the date of the document sued on :

Held, that the suit was governed by Limitation Act, schedule II, article 132, and that an actual demand was not necessary to establish a starting point for limitation and that the suit was barred by limitation.

SECOND APPEAL against the decree of D. Broadfoot, Acting District Judge of Trichinopoly, in Appeal Suit No. 4 of 1895, affirming the decree of G. Narasimhalu Naidu, District Munsif of Kulitalai, in Original Suit No. 513 of 1893.

Suit to recover principal and interest due on a hypothecation bond, dated 15th August 1876, and executed by defendant No. 1 in favour of the predecessor in title of the plaintiff to secure together with interest Rs. 80 payable on demand. The District Munsif held that the suit was barred by limitation and passed a decree for the defendants, which was affirmed on appeal by the District Judge.

(1) I.L.R., 7 Mad., 545.

* Second Appeal No. 1525 of 1896.