

In these circumstances as the plaintiff's suit is for trespass and to recover possession of the land which the defendant alleges has been redeemed under the oral contract which he sets up, I agree that the decrees of the lower Courts are wrong and should be set aside and the suit should be remanded to the Munsif's Court for hearing and disposal according to law.

The costs throughout should abide and follow the result.

GOSSETI SUBBA  
S. ROW  
12.  
VARIGONDA  
NABASIMHAN.

## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.*

MEPPATT KUNHAMAD (DEFENDANT), APPELLANT,

v.

CHATHU NAIR (PLAINTIFF), RESPONDENT.\*

1903.  
January 23.

*Malabar law—Revenue Recovery Act—(Madras) Act II of 1864, s. 32—Purchaser of land at Revenue sale—Liability to pay tenant for improvements before obtaining possession.*

Where a kanom was granted for Rs. 5, the jenmi agreeing to pay the tenant the value of his improvements, and it was not alleged that the rent reserved was lower than the usual rent for such land, and the object of the lease was to bring waste land into cultivation :

*Held, that, having regard to the small amount of the kanom, the transaction must be regarded as in substance a lease; and the engagement made by the jenmi to pay the tenant the value of his improvements was binding on the Collector under section 32 of (Madras) Act II of 1864. A purchaser of the land at a revenue sale was therefore bound to pay compensation to the tenant for improvements before he could obtain possession.*

Suit for possession of land. Plaintiff bought the land at a sale for arrears of revenue. The land was held by defendant on a kanom from the defaulter. The question was whether plaintiff was entitled to possession of the land without payment of compensation for improvements to the tenant under Act I of 1900. The kanom was filed as exhibit I and was in the following terms:—"Kanom deed executed, etc., . . . I have hereby, this day, granted to you

\* Second Appeal No. 1039 of 1901, presented against the decree of N. S. Brodie, District Judge of North Malabar, in Appeal Suit No. 241 of 1900, presented against the decree of A. Annasawmi Ayyar, District Munsif of Badagara, in Original Suit No. 551 of 1899.

MEPPATT  
KUNHAMAD  
v.  
CHATHU  
NAIR.

under renewal, in kanom and kuzhikanom right for twelve years, the Neettukotta mala and the grounds included therein which belong in jenm to me, which have been held by you and which are described in the subjoined schedule on receipt of Rs. 5 as kanom. Therefore you shall take the trees, bamboos, etc., from these grounds, and the amount of rent to be paid to me per year exclusive of interest on the kanom amount is Rs. 8. This amount of Rs. 8 you shall pay me annually and take receipt therefor. If you reclaim the aforesaid grounds and make kuzhikurs and improvements thereon, I shall pay you the value thereof according to the local custom along with kanom. The elephant pits that now exist on these grounds belong to you. Therefore, if elephants fall on the pits that now exist and as the pits which you may hereafter dig in these grounds you shall pay me as janma-bhogam  $\frac{1}{6}$  of the value estimated for each elephant after it is restored to its proper state, and take receipt therefor. If you make paddy lands in the south of Eripara Thodu canal, it is agreed that I shall receive the jenmi's varam due therefrom. As these grounds are very extensive tracts their measurements are not entered." The District Munsif ordered the defendant to restore the land to plaintiff with all improvements on it upon payment by the plaintiff of Rs. 906-8-0 as compensation. Plaintiff appealed to the District Judge, who reversed that portion of decree which related to payment of compensation by plaintiff to defendant.

Defendant preferred this second appeal.

*J. L. Rosario* for appellant.

*Mr. T. Richmond and K. P. Govinda Menon* for respondent.

JUDGMENT.—Having regard to the small amount of the kanom (Rs. 5) the transaction must be regarded as, in substance, a lease. It is not alleged or shown that the rent reserved is lower than the usual rent for such land, and the object of the lease is essentially to bring waste land into cultivation. In this view the engagement made by the jenmi to pay the tenant the value of his improvements is binding upon the Collector under section 32, Act II of 1864, Madras, extended to purchasers at a revenue sale by section 41. The operation of sections 2 and 42 is limited by the provisions of sections 32 and 41. The plaintiff, therefore, before he can obtain possession of the hill purchased by him at the revenue sale, must pay the tenant compensation for his improvements. The tenant has not objected to being evicted before the expiration of

the term of twelve years fixed in his lease, but claims only compensation for improvements.

We, therefore, reverse the decree of the District Judge and restore that of the District Munsif with costs in this and in the lower Appellate Court.

MISFATT  
KUNDEHAD  
V.  
CHATTU  
NAIR.

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## APPELLATE CIVIL.

*Before Mr. Justice Boddam and Mr. Justice Bhashyam Ayyangar.*

MANAKAT VELAMMA AND OTHERS (PLAINTIFFS), APPELLANTS,

*v.*

IBRAHIM LEBBE AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1908.  
August 28

*Malabar Law—Debt incurred by Karnavan and senior Anandran for benefit of Tarwad—Decree for money—Liability of moveable property of Tarwad to attachment under that decree.*

A Tarwad consisted of plaintiffs and defendants Nos. 2 and 3. Defendants Nos. 2 and 3 were the Karnavan and senior Anandran of the Tarwad. A money decree had been obtained as against the Karnavan and senior Anandran on a debt which had been contracted by them for the benefit of the Tarwad, and, in execution of that decree, certain moveable property belonging to the Tarwad had been attached. In a suit for a declaration that the moveable property of the Tarwad was not liable to be attached and sold in execution of the decree:

*Held,* that the property was liable.

*Ittiachan v. Velappan*, (I.L.R., 8 Mad., 484) and *Govinda v. Krishnan*, (I.L.R., 15 Mad., 333), discussed.

SUIT for a declaration that certain moveable property attached in execution of a decree was not liable to be sold. The finding of both the lower Courts was that the moveable property in question belonged to the Tarwad of the plaintiffs and defendants Nos. 2 and 3. Defendants Nos. 2 and 3 were the Karnavan and senior Anandran of the Tarwad. The decree under which the property had been attached had been obtained as against the Karnavan and Anandran on a debt which they had contracted for the benefit of the family.

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\* Second Appeal No. 113 of 1902, presented against the decree of K. Krishna Rau, Subordinate Judge of South Malabar, in Appeal Suit No. 523 of 1901, presented against the decree of V. Rama Sastri, District Munsif of Battnad, in Original Suit No. 492 of 1900.