

## APPELLATE CIVIL.

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

1901.  
October 28.

KELAPPAN (DEFENDANT No. 2), APPELLANT,

v.

MADHAVI AND OTHERS (PLAINTIFFS AND DEFENDANT No. 1),  
RESPONDENTS.\*

*Malabar Law—Kuikanom lease for indefinite period—Customary law as to duration of lease—Limitation Act—Act XV of 1877, sched. II, art. 139.*

By the customary law of Malabar, a tenant under a kauom or kuikanom lease, is entitled not to be redeemed or ejected until the expiration of twelve years. But where no time is fixed for the duration of the lease it does not, under the customary law, determine on the expiration of twelve years from its date.

A kuikanom lease was granted in 1873, no time being fixed for its determination. In 1899, a suit was brought to recover the land, on payment of the value of improvements, when the defence of limitation was set up. It was contended that the kuikanom lease determined, by the customary law of Malabar, twelve years from its date, namely in 1885, and that as the suit had not been instituted within twelve years of that date, it was barred under article 139 of schedule II to the Limitation Act:

*Held*, that the suit was not barred.

Suit to recover a paramba, on payment of the value of improvements. A kuikanom lease of the land had been granted in 1873, no time being fixed for its determination. The defence of limitation was set up, but the Munsif held that the suit was not barred and decreed in plaintiff's favour. The District Judge on appeal confirmed that decree.

Defendant No. 2 preferred this second appeal.

*J. L. Rosario* for appellant.

*Ryru Nambiar* for respondents Nos. 1 and 2.

**JUDGMENT.**—Two grounds are urged before us in support of the second appeal.

The first is that the memorandum of Second Appeal No. 675 of 1884 preferred by one of the three defendants was confined to that portion alone of the property comprised in the suit in which the defendant was interested, and that therefore the

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\* Second Appeal No. 571 of 1900 against the decree of A. Thompson, District Judge of North Malabar, in Appeal Suit No. 452 of 1899, affirming the decree of M. Mundappa Bangera, District Munsif of Tellicherry, in Original Suit No. 51 of 1899.

reversal of the lower Appellate Court's decree and the restoration of the decree of the Court of First Instance by the High Court should be construed as limited only to such portion. This point was not taken in the lower Courts and we cannot allow it to be now set up, as it involves a question which cannot be determined without admitting additional evidence.

The second point urged is that the plaintiff's suit is barred by limitation, under article 139 of the Limitation Act, as it was not brought within twelve years from 1885 when it is contended that the kuikanom lease granted in 1873 determined by efflux of the time limited by the lease. There is no time fixed in the lease, and we are not prepared to say that a kuikanom lease, in which no term is fixed, is determined on the expiration of twelve years from its date. The customary law of Malabar requires that a tenant under a kanom or kuikanom lease should not be redeemed or ejected until the expiration of twelve years from its date, but it does not determine the lease at the expiration of the twelve years.

The second appeal fails and is dismissed with costs.

KELAPPAN  
v.  
MADHAVI.

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## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice Davies.*

VENKATA PAPAYYA RAO (PLAINTIFF), APPELLANT,

v.

VENKATA SUBBAYYA (DEFENDANT), RESPONDENT.\*

1901.  
October 29.

*Rent Recovery Act (Madras)—Act VIII of 1865, ss. 10, 69—Adjudication that plaintiff has failed to prove default by defendant—"Judgment"—Appeal.*

An order passed under section 10 of the Rent Recovery Act which amounts to an adjudication that the plaintiff has failed to prove default on behalf of the defendant, is a judgment within the meaning of section 69 of the Act and an appeal lies therefrom.

*Narasimhaswami v. Lakshamma*, (I.L.R., 22 Mad., 436), followed.

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\* Second Appeal No. 906 of 1900 against the decree of W. C. Holmes, District Judge of Kistna, in Appeal Suit No. 453 of 1899, affirming the decision of J. F. Bryant, Acting Head Assistant Collector of Kistna, in Miscellaneous Petition No. 28 of 1889, in Summary Suit No. 131 of 1899.