APPELLATE CIVIL.

Before Sir R. S. Benson, Officiating Chief Justice, and Mr. Justice Krishnaswami Ayyar.

1909. October 25, November 1.

GANGAMMA AND ANOTHER (DEFENDANTS NOS. 2 AND 3), APPELLANTS,

v.

BHOMMAKKA AND OTHERS (PLAINTIFFS AND FIRST DEFENDANTS), RESPONDENTS.*

Transfer of Property Act IV of 1882, s. 108, cl. (o)—Principle applicable to agricultural leases—Mulgeni tenant has no right to fell timber standing at time of grant.

Although Chapter V of the Transfer of Property Act does not apply to agricultural leases, the principles embodied therein may be applied to such leases.

The rules contained in section 108 (*h*) (*o*) will apply to mulgeni leases and a mulgeni tenant is not entitled to cut trees standing at the date of grant. The law applicable to occupancy tenants will not apply to such leases as the former is not a tenant but one holding divided ownership.

SECOND APPEAL against the decree of H. O. D. Harding, District Judge of South Canara, in Appeal Suit No. 179 of 1906, presented against the decree of C. D. J. Pinto, District Munsif of Udipi, in Original Suit No. 82 of 1905.

The facts of this case are sufficiently set out in the judgment.

M. Kunjunni Nair for *J. L. Rosario* for appellants.

P. C. Lobo for *K. P. Madhava Rau* for respondents.

JUDGMENT.—The question is whether a mulgeni tenant is entitled to cut down trees in existence at the time of the grant of the lease. There is no evidence worth the name of any local usage. The District Manual (see vol. I, page 130) throws no light on the matter. If the lease is agricultural, chapter V of the Transfer of Property Act has no application. But we think we are entitled to rely upon the analogy of the Act. See *Vasudevan Nambudripad* v. *Valia Chattu Achan*(1). Clause (*o*) of section 108 prohibits a lessee from felling timber and clause (*h*) authorizes the lessee to remove all things which *he has attached to the earth* provided he leaves the property in the state in which he received

* Second Appeal No. 601 of 1907.

(1) (1901) I.L.R., 24 Mad., 47 at p. 56.

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it. Lease is defined by section 105 of the Act to include one in perpetuity. It follows from the foregoing provisions that the defendants had no authority to cut down the jack trees which are both timber and fruit trees. "Cutting down, destroying or topping all trees which are timber either by the general law or by the particular custom of the country, is waste." See Woodfall's 'Landlord and Tenant,' 16th edition, page 660. The plaintiffs are therefore entitled to recover damages.

It has however been argued on the authority of *Sharoda Soondari Debia* v. *Gonce Sheik and others*(1) that the above view is erroneous. The decision in that case proceeded on the ground that the lessor reserved no reversionary interest in the land or in the trees which were growing on it. That decision in our opinion has no application. The question has been discussed in several cases whether an occupancy tenant has or has not any right to the trees on the holding and whether he is entitled to cut them and different views have been entertained. See *Bodda Goddeppa* v. *The Maharaja of Vizianagram*(2); *Goluck Rana and others* v. *Nubo Soonduree Dossee*(3) and *Deoki Nandan* v. *Dhian Singh*(4). But an occupancy tenant is not a lessee. And whatever rule of law may be applied with reference to the rights of an occupancy tenant to the trees on his holding it has no necessary application to the case of a lessee for a term or in perpetuity. There is no question of injury to the reversion in the former case which is one of divided ownership. The second appeal is dismissed with costs.

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(1) (1868) 10 W.R., 419.
(2) (1907) I.L.R., 30 Mad., 155.
(3) (1874) 21 W.R., 344 at p. 346.
(4) (1886) I.L.R., 8 All., 467 at p. 475.