sixth and seventh issues in the case, and also on the following issue :—

"Whether any and what sums" were credited by the Collector within three years before the date of this suit towards the arrear of revenue in question from the income of the plaintiff's estate during the time that it was under the management of the Collector under the provisions of Madras Act II of 1864 and whether any and what amounts were so credited more than three years before the date of this suit, but subsequent to the death of the late Maharajah of Vizianagram.

The findings should be returned within two months from this date. Further evidence may be taken on the additional issue now sent down, and if the Judge thinks fit also on the three original issues.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arnold White, Chief Justice, Mr. Justice Bhashyam Ayyangar, and Mr. Justice Moore.

KELU NEDUNGADI AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

KRISHNAN NAIR AND OTHERS (DEFENDANTS), RESPONDENTS.*

1903. March 5. July 13.

Malabar law—Suit to redeem kanom—Failure to prove "special exigency" less than twelve years having expired—Maintainability of suit—"Avasyamayi Chodikambole"—"Avasyamayi Varumbole."

By the custom of Malabar, a kanom enures for twelve years unless the parties to it have by express contract provided for its redemption at an earlier date. A kanom deed contained thevern acular words "Avasyamayi Chodikambole," "Avasyamayi Varumbole." On the question being referred to a Full Bench whether these words meant "on demand," or whether they meant "on demand based on some special exigency" :

Held, that the words did not impose on a jenmi the obligation of proving "some special exigency" as a condition precedent to his right to recover "on demand" before twelve years have elapsed.

Mahomed v. *Ali Koya*, (I.L.R., 14 Mad., 76), dissented from.

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* Second Appeal No. 1563 of 1901, presented against the decree of A. Venkataramana Pai, District Judge of South Malabar at Calicut, in Appeal Suit No. 240 of 1901, presented against the decree of R. A. Krishnaswami Ayyar, District Munsif of Calicut, in Original Suit No. 560 of 1900.

KELU NEDUNGADI v. KRISHNAN NAIR.

QUESTION referred to a Full Bench. The suit was for the redemption a kanom, and an issue was raised as to whether the suit was premature. On this issue the District Munsif said:—The second defendant's vakil argued that according to the wording in exhibit B, the kychit, the plaintiffs are not entitled to institute the present suit for redemption at this stage as the usual period of twelve years has not expired. The second defendant's vakil also relied on the language of exhibit I (the kanom deed) which is slightly different from the language employed in exhibit B. The words used in exhibit B are "*Avasyamayi Chodikkambole*, whereas the words used in exhibit I are *Avasyamayi Varumbole*." He then considered the decided cases, and decided that the plaintiffs were entitled to institute the suit, and that the suit was not premature. He decreed in plaintiffs' favour and fixed the value of improvements at Rs. 308-1-1. Plaintiffs appealed against the award of compensation for improvements; and defendants filed a memorandum of objections against the District Munsif's finding that plaintiffs were entitled to sue.

The Acting District Judge dealt with the latter point as follows:—"The plaint kanom of 1893 is evidenced by the kanom deed (exhibit I) and its counterpart or kychit (exhibit B). By the custom of the country a kanom enures for twelve years unless the parties have by express contract provided for its redemption at an earlier date. In the present case the stipulation is that the land should be surrendered whenever the lessor has necessity for the land and demands its surrender. The lessor in his kanom deed I says that 'whenever I have necessity' the lessee should surrender the land and the lessee in his kychit (exhibit B) says that he should surrender the land whenever the lessor demands it. The two documents are but parts of the same instrument and must be read together. The two expressions referred to constitute but one stipulation, namely, the stipulation providing for the surrender of the land whenever the lessor has necessity and demands it. Each expression taken separately would be inconsistent with the effect of the other. If the land had been intended to be surrendered on demand without reference to the landlord's having necessity for it, the expression in exhibit I would be without effect —but treating the two expressions as parts of one and the same agreement effect is given to both. This being so, the ruling in

Mahomed v. *Ali Koya*(1) applies. There, their Lordships have ruled 'that in the absence of any special exigency the suit is premature and must be dismissed.' In this case the plaintiffs have not even alleged, much less proved, any special necessity and therefore their suit must fail." He dismissed plaintiffs' appeal, and allowed the defendants' memorandum of objections, reversed the decree and dismissed the suit.

Plaintiffs preferred this second appeal when their Lordships (Subrahmania Ayyar and Benson, JJ.) made the following

ORDER OF REFERENCE TO A FULL BENCH.—The question is as to the construction of the words "Avasyamayi Chodikambole" in exhibit B and "Avasyamayi Varumbole" in exhibit I. Do they mean nothing more than "on demand" or do they mean "on demand based on some special exigency" on the part of the plaintiffs.

The decisions in cases which turned on words identical or substantially similar are not uniform.

In the case of *Mahomed* v. *Ali Koya*(1) and in the unreported case therein referred to, the latter view was adopted, while in *Vaderi Kunnath Bappoo* v. *Kayante Akath Ayissa*(2) and *Koyassan Kuti* v. *Perumal Tirumala*(3), the former view was taken.

The question is one of considerable practical importance in Malabar and we resolve to refer it for the decision of a Full Bench.

The case came on for hearing in due course before the Full Bench constituted as above.

K. P. Govinda Menon for appellants.

C. V. Anantakrishna Ayyar for second respondent.

OPINION.—We are of opinion that the Malayalam words mentioned in the order of reference do not impose on a jenmi the obligation of proving "some special exigency" as a condition precedent to his right to recover "on demand" before twelve years.

We think *Vaderi Kunnath Bappoo* v. *Kayante Akath Ayissa*(2) was rightly decided and we dissent from the decision in *Mahomed* v. *Ali Koya*(1) that "special exigency" must be proved.

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(1) I.L.R., 14 Mad., 76. (2) S.A. No. 1665 of 1898 (unreported).
(3) S.A. No. 269 of 1899 (unreported).