landlord and the tenants for a series of years as to the rent to be paid, except in so far as the question as to the right of the Zemindarni to charge enhanced rates in consequence of the levy of increased water-rate by Government is concerned. Such being the case, the contention now advanced cannot be sustained. The claim of the plaintiff to charge enhanced rent in consequence of the increased water-rate is one that must be disallowed for fasli 1307 for the reasons already given, and the question whether it will be open to the landlord to levy an enhanced rate in subsequent faslis is one with respect to which we offer no opinion at present.

These second appeals must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar and Mr. Justice Moore.

MARIYIL RAMAN NAIR (FIRST DEFENDANT), APPELLANT,

v.

K. M. NARAYANAN NAMBUDIRIPAD AND ANOTHER (PLAINTIFF, NINETEENTH DEFENDANT), RESPONDENTS.*

1902, September 29.

Malabar Law—Suit by one of two urulans to recover property demised on kanom—Non-joinder of the only other urulan as co-plaintiff—Joinder as defendant—Evidence of adverse acts—Maintainability of suit.

One of two urulans sued to redeem property which had been demised to the defendants on kanom. He did not join the other urulan as a co-plaintiff, but impleaded him as a defendant. The other urulan had granted a renewal of the kanom, and plaintiff in his suit ignored that renewal and contended that it was invalid. On objection being raised that the suit was not maintainable by reason of the non-joinder of the other urulan as a co-plaintiff:

Held, that the suit was maintainable. In the circumstances the plaintiff could not have joined the other urulan, nor could it be held that he was bound to have consulted him before the suit was filed, or asked him to join in bringing it.

Savitri Antarjanam v. *Raman Nambudri*, (I.L.R., 24 Mad., 296), distinguished and doubted.

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* Second Appeals Nos. 77 and 78 of 1901, presented against the decree of K. Kristna Row, Subordinate Judge of South Malabar at Calicut, in Appeal Suits Nos. 250 and 279 of 1900 presented against the decree of V. Kelu Eradi, District Munsif of Kutnad, in Original Suit No. 217 of 1899.

MARIYIL RAMAN NAIR v. NARAYANAN NAMBUDIRIPAD.

SUIT to recover immoveable property. Plaintiff and defendant No. 19 were the two urulans of the property now sued for. Plaintiff sued alone, without joining defendant No. 19 as a co-plaintiff, to recover the property, which had been demised on kanom to the karnavan of defendants Nos. 1 to 18. These defendants pleaded that defendant No. 19 had given them a renewal of the kanom and had taken the renewal fees, and that the plaintiff was estopped from challenging the validity of that renewal. An issue was framed as to whether plaintiff was entitled, singly, to maintain the suit. The District Munsif held that he was and decreed in plaintiff's favour. The Subordinate Judge, on appeal, held that defendant No. 19 had all along been acting adversely to the interest of the Devaswom, and that it would not have been possible to institute the suit with him as a co-plaintiff.

He upheld the District Munsif's decision.

First defendant preferred this second appeal.

J. L. Rosario for appellant.

P. R. Sundara Ayyar for first respondent.

K. P. Govinda Menon for third respondent.

JUDGMENT.—It is urged that the plaintiff's suit should have been dismissed on the ground that he had not consulted his co-urulan, the nineteenth defendant, or asked him to join him as co-plaintiff before filing his plaint and reference is made to *Savitri Antarjanam* v. *Raman Nambudri*(1). In the present case it is shown that the nineteenth defendant had granted a renewed kanom and the plaintiff sued to redeem the prior kanom ignoring this renewal his plea being in fact that the renewal was invalid. Under these circumstances the plaintiff could not have joined the nineteenth defendant with him as a co-plaintiff. Such being the case it is impossible to hold that he should have consulted him before filing the suit or asked him to join in bringing it. On this ground we distinguish the present case from that of *Savitri Antarjanam* v. *Raman Nambudri*(1). If we were not able to do this we should be obliged to refer the question dealt with in this decision to a Full Bench as we are disposed to agree with the view taken in *Pyarimohun Bose* v. *Kedanath Roy*(2) and *Biri Singh* v. *Nawal Singh*(3). The renewal granted by the

(1) I.L.R., 24 Mad., 296. (2) I.L.R., 26 Calc., 409.
(3) I.L.R., 24 All., 226.

nineteenth defendant having been shown not to be *bonâ fide* and valid it cannot be assumed that at the time of the execution of the renewed kanom there was an adjustment of rent up to that date binding on the Devaswom. These second appeals are dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Davies and Mr. Justice Benson.

IN RE BALAMBAL (SECOND ACCUSED), PETITIONER.*

1902. September 30.

Penal Code—Act XLV of 1860, s. 498—"Enticing away" a woman—Charge of abetment against the woman enticed—Validity.

Where a man has been convicted of enticing away a woman, under section 498 of the Indian Penal Code, the woman who was enticed away by him cannot be guilty as an abettor.

Whether a woman could be convicted of abetting the taking away of herself within the meaning of section 498.—*Quære.*

CHARGE (against first accused) of enticing away a married woman (second accused) under section 498 of the Indian Penal Code and (against second accused) of abetment of that offence under sections 498 and 109 of the Indian Penal Code. The Sub-Magistrate of Gingee convicted both accused, sentencing first accused to six months' rigorous imprisonment and to pay a fine of Rs. 100, with one month's further rigorous imprisonment in default, and sentencing second accused to three months' simple imprisonment. This reference was made by the District Magistrate on the ground that as the second accused was the woman whom first accused was charged with enticing away, the second accused could not be punished as an abettor.

The Public Prosecutor in support of the reference.

JUDGMENT.—Whether a woman could be convicted of abetting "the taking away" of herself within the meaning of section 498, Indian Penal Code, we need not now decide, as that is not the offence charged against her, but we are of opinion that when a man

* (Criminal Revision Case No. 36 of 1902.) Case referred for the orders of the High Court under section 438 of the Code of Criminal Procedure by E. A. Elwin, District Magistrate of South Arcot, in his letter, dated 25th July 1902, Reference on Criminal Revision Case No. 30 of 1902.