SEVUGAN CHETTY v. KRISHNA AIYANGAR. — BENSON AND SPENCER, JJ.

property and he sued to recover these accounts. It is difficult to see why such a suit should be unsustainable.

We set aside the decrees of the Courts below and remand the suit to the District Munsif to be restored to his file and to be disposed of according to law. He should allow the amendment desired by the plaintiff, and allow the defendants to put in a fresh written statement if they desire to do so, and, if necessary, he should revise the issues. The costs will abide the result.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1911. November. 1 and 2.

M. ACHUTHA MENON (PLAINTIFF), APPELLANT,

v.

V. C. SANKARA NAIR AND FOUR OTHERS (DEFENDANTS NOS. 4, 1 TO 3, AND LEGAL REPRESENTATIVES OF FIFTH DEFENDANT), RESPONDENTS.*

Malabar Law—Karamkari *tenure in South Malabar—Alienation by tenure holder, effect of, even in the absence of clause for re-entry.*

A holder of land on *Karamkari* or *Karaimakari* tenure in South Malabar has only a heritable or permanent right of cultivation but not a right of alienation, which event puts an end to the tenure; and the landlord entitled to the reversion is entitled to possession on alienation even in the absence of an express provision for re-entry.

Moore's Malabar Law and Custom, page 308, referred to.

Parameshri v. *Vittappa Shanbaga*, [(1903) I.L.R., 26 Mad., 157] and *Netrapal Singh* v. *Kalyan Das* [(1906) I.L.R., 28 All., 400], distinguished.

Obiter.—A *karamkari* holder in North Malabar has no heritable right at all.

SECOND APPEAL against the decree of K. IMBICHUNNI NAYAR, the Subordinate Judge of South Malabar at Palghat, in Appeal No. 380 of 1909, presented against the decree of P. S. SITARAMA AYYAR, the District Munsif of Alatur, in Original Suit No. 123 of 1908.

The facts of this case are stated in the judgment.

J. L. Rosario for the appellant.

M. Kunjunni Nayar for the first respondent.

---

* Second Appeal No. 753 of 1910.

JUDGMENT.—The plaintiff is a *melcharth* holder the *jenmi* of certain land in the possession of the fourth defendant who purchased the rights of one Krishna Sastri. The land was demised to Krishna Sastri, the father of defendants Nos. 1 to 3, under Exhibit VII in 1893 by a *stanom*-holder, a predecessor in title of the fifth defendant on "*Karamkari* tenure." The document provides that the land should be held by the demisee and his *anandravans* "so long as they exist" "without selling or mortgaging," duly paying the rent fixed and also paying the renewal fee at times of renewal and "receiving that" from the *stani*. Before the time of renewal arrived, however, the land was demised on *melcharth* to the plaintiff. The original demisee's heirs (defendants Nos. 1 to 3) in the meanwhile had alienated the holding to the fourth defendant. The principal question we have to decide is whether the right given to the demisee under Exhibit VII was terminated by the alienation. The Subordinate Judge has held on the authority of *Parameshri* v. *Vittappa Shanbaga*(1) and *Netrapal Singh* v. *Kalyan Das*(2), that the alienation did not put an end to the holding. Those decisions have really no bearing on the present case. They held on the construction of the documents in question therein that the clause forbidding alienation without a provision for re-entry in case of alienation did not give the landlord a right to eject. The question we have to decide is whether non-transferability is one of the incidents of *Karamkari* tenure. If it is, the absence of an express provision for re-entry in case of alienation would be immaterial. Perpetual occupany right without rights of alienation is well known in this country. Our attention has not been drawn to any case in which the question of a "*Karamkari*" holder's right to transfer has been decided. The learned vakil for the appellant relies on the opinion of the Sudder Court in its proceedings of the 5th of August 1856. The proceedings have always been treated as authoritative and may be relied on in the absence of any precedents. The observations made regarding "*Karamkari*" are as follows: "In this case the land is made over for permanent cultivation by the tenant in return for services rendered. Where the proprietary title is vested in a pagoda, the grant will be made for future services.

(1) (1903) I.L.R., 26 Mad., 157. (2) (1906) I.L.R., 28 All., 490.

ACHUTHA MENON v. SANKARA NAIR.

BENSON AND SUNDARA AYYAR, JJ.

In some cases land is mortgaged on this tenure, the *kanam* mortgagee paying the surplus rent produce to the landlord, after deducting the interest of the money he has advanced. The tenant has, in North Malabar, only a life-interest in the property, which at his death reverts to the landlord. In the South, the land is enjoyed by the tenant and his descendants, until there is a failure of heirs, when it reverts to the proprietor. Except where the land is granted for special services, an annual rent is payable under this tenure. The tenant's right is confined to that of cultivation, but it is permanent, and he cannot be ousted for arrears of rent, which must be recovered by action, unless there be a specific clause in the deed declaring the lease cancelled, if the rent be allowed to fall into arrears." —Moore's "Malabar Law and Custom," page 308.

It will be observed that a *Karamkari* holder in North Malabar has no heritable right at all, and with respect to South Malabar the right of reversion in the landlord *primâ facie* supports the appellant's contention that the tenure is inalienable. Moreover the tenant's right is stated to be "confined to that of cultivation" though it is permanent. The word "*Karamkari*" or "*Karaimakari*" itself means only permanent right of cultivation. The language of the instrument shows that the cultivator has no right of alienation. We must therefore hold that the alienation put an end to the right created by Exhibit VII. The plaintiff is therefore entitled to a decree for possession. Payment of rent by the fourth defendant to the fifth defendant is not valid as against the plaintiff. He is therefore entitled to a decree for rent also. The decree of the Lower Appellate Court is reversed and that of the District Munsif restored with costs payable by the fourth defendant both here and in the Lower Appellate Court.