

state that the Court auction-purchaser was a party to the proceedings taken to have the auction sale set aside. No records have been produced before us to establish that fact. We therefore cannot hold that section 151 empowers the Court to pass an order for restitution against a person not shown to be a party to and so bound by the order of the Appellate Court setting aside the sale.

SUBBAMMA  
v.  
CHENNAYYA.  
—  
SADASIVA  
AYYAR, J.

The appeal is dismissed with costs.

K.R.

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## APPELLATE CIVIL.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Ayling  
and Mr. Justice Kumaraswami Sastriyar.*

PALAKKUNNATH ILLATH GOVINDAN NUMBUDIRI  
(PLAINTIFF),

1917,  
October 11.

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v.

OTTATHAYIL MOIDIN (DEFENDANT).\*

*Stamp Act (II of 1899), sec. 25—Marupat—Counterpart of lease—Document giving a charge on improvements for arrears of rent—Stamp duty, whether payable both as counterpart and as mortgage.*

Where a tenant executed a *marupat* in favour of a landlord, agreeing therein that the arrears of rent, if any, should be a charge on the improvements that might be made by him :

*Held*, that a *marupat* is the counterpart of a lease or a deed executed by a tenant promising to pay a certain rent, and that the document in question must be stamped both as a counterpart and as a mortgage.

CASE stated under section 60 of Stamp Act (II of 1899) by H. D. C. REILLY, the acting District Judge of North Malabar, in Original Suit No. 675 of 1915, on the file of S. V. PADMANABHA AYYANGAR, the District Munsif of Taliparamba.

This is a reference made to the High Court by the District Munsif of Taliparamba through the District Judge of North Malabar under section 60 of the Indian Stamp Act (II of 1899) in respect of a document sued on by the landlord to recover rent in Original Suit No. 675 of 1915 on the file of the District Munsif's Court.

The document sued on was a *marupat* or counterpart of a lease, executed by the tenant ; it contained a provision charging

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\* Referred Case No. 7 of 1916.

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the arrears of rent on the improvements that might be made by the tenant. The portion of the document providing for a charge was as follows :—

“ But if the *pattam purappad* fixed on inspection as agreed is kept in arrears without being paid up every year, I consent to the amounts that may be in arrears, being realized together with interest thereon at the usual rate till the date of realization and to the properties being recovered possession of from me within the prescribed period after paying to me the *kuzhikkur* value.

“ The *purappad* along with the *pattam purappad* that may be fixed on inspection would not exceed Rs. 20.

“ I further agree to the amount that may be in arrears on account of *purappad*, etc., mentioned above, being always charged as *kudikkadam* (encumbrance) on the entire *kuzhikkur chamyams* belonging to me in the said puramba. There are no encumbrances (*kudikkadums*) whatever on these till now, etc.”

The District Munsif levied a stamp duty as on a mortgage-deed and also a penalty and forwarded the document and the certificate under sections 35 and 38 of Act II of 1899 to the Sub-Collector. The Sub-Collector returned the document holding that the document was an agricultural lease exempt from stamp duty and that it could not be impounded and that duty and penalty should not have been levied. The District Munsif re-submitted the papers to the Sub-Collector who returned the same and pointed out that the Board of Revenue had in B.P. No. 2389, dated 19th August 1885, ordered that such documents were only agreements to lease and not mortgages and relied also on *Eressa Menon v. Shamu Patter*(1).

The District Munsif thereupon stated a case for reference to the High Court through the District Judge under section 60 of the Stamp Act.

WALLIS, C.J.,  
AYLING AND  
KUMARA-  
SWAMI  
SASTRIYAR,  
JJ.

JUDGMENT.—A *marupat* is a counterpart of lease or a deed executed by a tenant promising certain rent—Moore’s Malabar Law.

We think it must be stamped both as a counterpart and as a mortgage.

K.R.