

APPAVU  
v.  
SEENI.

AYLING AND  
SESHAGIRI  
AYYAR, JJ.

the Specific Relief Act before the last 37 words were repealed. On the other hand *Sheo Babu v. Udit Narain*(1) supports the view we have taken.

We must therefore set aside the decree passed in the respondent's suit, Original Suit No. 122 of 1913, and dismiss it. It is said that the suit of the defendant is still pending. In the circumstances, we think each party should bear his own costs throughout.

S.V.

## APPELLATE CIVIL.

*Before Mr. Justice Seshagiri Ayyar and Mr. Justice Bakewell.*

1917,  
March, 20.

THEMA AND ANOTHER (PLAINTIFFS), APPELLANTS IN BOTH  
SECOND APPEALS,

v.

KUNHI PATHUMMA AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

*Customary law of South Kanara - Kuzhikanam lease—Compensation for improvements—Right of tenant to possession until payment—Possession by tenant after period of lease, nature of—Possession, if adverse—Notice to quit, if necessary—Customary law of Malabar—Malabar Compensation for Tenants Improvements Act (Madras Act I of 1900), principles of, is applicable.*

Under the customary law of South Kanara, a *kuzhikanam* lessee is, as in Malabar, entitled to remain in possession of the holding after the expiry of the period fixed in the lease until he is paid the value of the improvements; consequently he does not acquire title by adverse possession by remaining in possession of the lands for more than twelve years after the expiry of the lease.

*Srinivasa Pillai v. Venkatammal* (1913) 24 M.L.J., 296 and *Kummatha Vittel Kunhi Kuthali Haji v. Reverend Antoni Goveas* (1913) M.W.N., 330, referred to.

*Subbraveti Ramiah v. Gundala Ramanna* (1910) I.L.R., 33 Mad., 260, distinguished.

A *kuzhikanam* lessee who remains on the land after the period fixed in the lease, awaiting the payment of compensation for improvements, is not holding over as a tenant, and, in the absence of evidence of assent by the landlord to the continuance of the tenancy, is not entitled to a notice to quit.

Section 5 of the Malabar Compensation for Tenants Improvements Act (I of 1900) only embodies the customary law of Malabar and South Kanara.

SECOND APPEALS against the decrees of V. C. MASCARENHAS, the Subordinate Judge of South Kanara, in Appeals Nos. 50 and 51

(1) (1914) 12 A.L.J., 757.

\* Second Appeals Nos. 1504 and 1505 of 1916.

of 1916, preferred against the decrees of V. KUNHI RAMAN NAYAR, the District Munsif of Kasaragod, in Original Suits Nos. 426 and 427 of 1914 respectively.

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The suit properties belonged to the second defendant's tarwad. They were granted by the karnavan to the first defendant's uncle Kunhali under a registered *kuzh kanam* deed, dated 6th August 1885, for a term of fifteen years. The lease was transferred by Kunhali to the first defendant, who continued in possession of the land even after the expiry of the period of the lease. The plaintiff obtained a usufructuary mortgage of the suit lands as well as some other lands from the second defendant and instituted these suits on the 22nd July 1914 for recovery of possession of the lands comprised in the *kuzhikanam* lease and offered to pay the value of the improvements made by the first defendant on the holding in each of the suits. The plaintiff also alleged that he gave notice to quit on 7th March 1914 to the first defendant asking the latter to quit the lands by the 13th April 1914. The District Munsif decreed the suit, but on appeal the learned Subordinate Judge reversed the decree and dismissed the suit, holding that the notice to quit was not a proper and reasonable notice in the circumstances of the case, and that the suit was also barred by limitation. The plaintiffs preferred these Second Appeals in the two suits.

J. L. Rosario for the appellants.

C. Madhavan Nair for the respondents.

The following JUDGMENT of the Court was delivered by:—

SESHAGIRI AYYAR, J.—The Subordinate Judge is wrong on both the points decided by him. There can be no question of adverse possession in favour of the defendant, because under the customary law of Malabar, the *kuzhikanam* lessee is entitled to remain in possession until he is paid the value of the improvements.

SESHAGIRI  
AAYAR, J.

In this respect, the law is the same in South Kanara: *Srinivasa Pillai v. Venkatammal*(1). It is true that section 5 of the Malabar Compensation Act does not in terms apply to South Kanara but as was pointed out in *Kunmatha Vittel Kunhi Kuthulai Haji v. Reverend Antoni Goveus*(2), that section only embodies the customary law of Malabar and South Kanara.

(1) (1913) 24 M.L.J., 296.

(2) (1913) M.W.N., 339.

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Consequently on the expiry of the period fixed, the tenant does not become a trespasser. The decision in *Subbraveti Ramiah v. Gundala Ramanna* (1) quoted by the Subordinate Judge has no application to Malabar *kuzhikanam* tenants. We must therefore hold that the defendant has not acquired a title by prescription.

On the question of the reasonableness of the notice to quit, we think that under the law a tenant who remains on the land awaiting the payment of the compensation to him is not holding over as a tenant. Section 5 of the Malabar Compensation Act says that he is entitled to remain on the land, notwithstanding the fact that the tenancy has determined; therefore his possession is not by virtue of a tenant's right, but because there are moneys due to him which have to be ascertained and paid. In the present case the period of lease was fixed, and on the expiry of that period, the tenancy came to an end. We have not been referred to any evidence showing that the landlord assented to the continuance of the tenancy. Mr. Madhavan Nair strongly relied upon a decision of this Court in Second Appeals Nos. 771 to 773 of 1914. In that case it was found that the tenant made a yearly payment. Moreover the period of the tenancy was not fixed. We do not think that decision compels us to hold that when a period is fixed and there is no subsequent assent by the landlord, the quantum tenant is entitled to any notice.

Such suits should be regarded as practically suits for redemption. The Court should on ascertaining the value of the improvements fix a time within which the compensation will have to be paid and pass a decree directing surrender on the expiry of that period.

We reverse the decree of the lower Appellate Court, direct him to get the improvements re-valued, to fix a time for payment and to pass a decree for surrender on the expiry of that period. The tenant in possession is bound to give credit to the plaintiff for the rent reserved. This will be done in taking the accounts. Costs will abide the result.

K.R.