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parties agree that the following order may be substituted therefor, viz., "and do pay the plaintiff mesne profits from fasli 1344, until delivery of possession or the expiry of three years, whichever event first occurs, at the rate of Rs. 371 per year, less any cist and water tax that may be paid by the defendants and that the plaintiff do pay Rs. 54 being the excess recovered by him from the defendants in respect of profits up to the end of fasli 1343." Subject to this variation, the decree of the Court below is confirmed and the appeal dismissed with costs.

G.R.

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and
Mr. Justice King.*

ACHAYI AND ANOTHER (PETITIONERS), APPELLANTS,

v.

PARAMESWARAN NAMBOODRIPAD AND ANOTHER
(RESPONDENTS), RESPONDENTS.*

Malabar Tenancy Act (XIV of 1930), secs. 3(l) and (v) and 17(a)—Kanamdar—Kanam evidenced by written instrument—Kanamdar under—Transferee named in document—Persons jointly entitled to kanam amount with—Kanamdars within meaning of Act if.

Under the Malabar Tenancy Act, where a kanam is evidenced by a written instrument, the kanamdar can be no other person than the transferee mentioned in the document or his legal representative or his assignee. The two contracting parties are the landlord on the one hand and the kanamdar on the other. The landlord cannot recognize any person other than the person to whom the kanam has been transferred and

* Second Appeal No. 215 of 1933.

cannot grant a renewal of the kanam to any person other than the kanamdar.

Held, accordingly, that the sisters of the kanamdar, that is the transferee mentioned in the document, could not claim to be kanamdars within the meaning of the Act and to be entitled to a renewal of the kanam on the ground that they were jointly entitled with their brother to the kanam amount as heirs of their father and were therefore entitled to a renewal of the kanam as persons jointly interested in it and that their brother was merely a kanamdar for himself and on their behalf.

APPEAL against the decree of the Court of the Subordinate Judge of Ottapalam in Appeal Suit No. 25 of 1932 (Appeal Suit No. 567 of 1931, District Court), preferred against the order of the Court of the District Munsif of Choughat in Register Interlocutory Application No. 2012 of 1931 on Original Suit No. 424 of 1929.

T. R. Ramachandra Ayyar and *C. T. Verghese* for appellants.

K. P. Ramakrishna Ayyar and *D. H. Nambudripad* for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by BEASLEY C.J.—The point to be decided in this second appeal is one which arises under the Malabar Tenancy Act. The appellants who are two sisters applied for the renewal of a kanam claiming to be kanamdars within the meaning of the Malabar Tenancy Act. The facts are that the elder brother of the appellants got a renewal of the kanam in 1917 in his name. The first respondent filed a suit against him and evicted him and the Malabar Tenancy Act does not apply to his case as the suit against him was filed on 17th July 1929. The appellants then claimed to be kanamdars, their case being that they were jointly entitled with their brother to the kanam amount.

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The District Munsif took no evidence upon this point, being of the opinion that upon an interpretation of the Act the appellants were not kanamdars ; and the lower appellate Court took the same view. The appellants' contention is that evidence should have been taken which would show that they were jointly entitled with their brother to the kanam amount as heirs of their father and are therefore entitled to a renewal of the kanam as persons jointly interested in it and that their brother was merely a kanamdar for himself and on their behalf. The question is whether the Malabar Tenancy Act recognizes such a position. The point to be considered is : what does "kanamdar" mean under the Act? By section 3 (l) "kanam" means a transfer by a landlord to a tenant, i.e., kanamdar, of an interest in specific immovable property. "Tenant" is defined in section 3 (v) as meaning any person who has paid or agreed to pay rent or other consideration for his being allowed by another (the landlord) to enjoy the land of the latter (the landlord) and includes a kanamdar. "Landlord" is defined in section 3 (o) as meaning a person under whom a tenant holds and to whom he is liable to pay rent or *michavaram* and includes a jenmi. Now if the "kanam" which is a transfer is evidenced by a written instrument, the kanamdar who is the transferee by reason of the definition in section 3 (l) can, it seems to us, be no other person than the transferee mentioned in the document or his legal representative or his assignee. It is he too who alone can be said to have agreed to pay rent or other consideration to be allowed by the landlord to enjoy his land. The two contracting parties are the landlord on the one hand

and the kanamdar on the other. It seems plain that the only person whom the landlord can sue is the other contracting party, the kanamdar. He cannot sue any other person for rent and, in our view, cannot recognize any person other than the person to whom the kanam has been transferred. Further assistance is obtained from section 17 (a) which entitles a kanamdar on the expiry of the kanam under which he holds, on payment of the renewal fee therein specified, to claim a renewal of the kanam for a period of twelve years and the landlord is bound to grant a renewal. What would happen if, for example, at the expiry of the kanam, A to whom it had been granted claims a renewal of it on payment of the renewal fee and at the same time B, a stranger, claims a renewal to himself stating that A has been in possession of the kanam on his behalf. It is quite clear from section 17 (a) that the landlord would be bound to renew the kanam to A and could not grant a renewal to B. The only person whom he would be entitled to recognize would be A. The right claimed by B would be a matter to be settled between A and B—a matter with which the landlord is not concerned. The scope of the Act, in our view, is to provide for proceedings between the two contracting parties alone and an analysis of all the relevant sections leaves us in no doubt that the Courts below were right in holding that in this case only the appellants' brother (and not the appellants themselves) was the kanamdar who alone, had the date of the institution of the suit permitted it, could have applied for a renewal. This appeal must, therefore, be dismissed with costs of the first respondent.

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