

1863.
 March 28.
 S. A. No. 129
 of 1862.

APPELLATE JURISDICTION. (a)

Special Appeal No. 129 of 1862.

PRAMATAN TUPEN NAMBURDIPÁD.....*Appellants.*
 MADATHIL RÁMEN.....*Respondent*

A melkánamlár cannot eject kánamlár or his assignee before the expiration of twelve years from the date of the kánam.

THIS was a special appeal from the decision of H. D. Cook, Civil Judge of Calicut, in Appeal Suit No. 492 of 1860, affirming, substantially, the decree of the District Munsif of Ernál in Original Suit No. 20 of 1857.

That suit was brought for the restoration of lands originally the janmam property of the first plaintiff, which he assigned on kánam mortgage to the first defendant in 1847, and of which, in 1855, on the latter refusing to make a further advance of money on the security of the property, he transferred the right of possession by a melkánam deed to the second plaintiff. The second plaintiff accordingly sued in virtue of this transfer, for the recovery of the lauds in question with arrears of net rent, on payment of the value of the mortgage and improvements.

The seventeenth defendant pleaded that in 1856 he had obtained a legal assignment of the first defendant's kánam claim, and that the second plaintiff had no title to eject him from possession.

The District Munsif passed judgment in favour of the second plaintiff as respects possession of the lands with arrears of rent from the year 1855-56. On appeal this decree was substantially confirmed by the Civil Judge.

The seventeenth defendant, preferred a special appeal against the Civil Judge's decree.

Mayne, for the special appellant, the seventeenth defendant. The first defendant, and therefore the seventeenth defendant who claimed under him, had a right to hold the kánam for twelve years, of which only seven had expired at the date of the transfer to the second plaintiff.

(a) Present: Frere and Holloway, J. J.

Branson for the special respondents, the plaintiffs.

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FRERE, J.:—It is admitted in this case that the first defendant held under a kánam mortgage of the year 1847; and the seventeenth defendant, who obtained an assignment of his claim, was therefore by the law and usage of Malabar, entitled to remain in quiet and unmolested possession for the remainder of the term of twelve years to be calculated from the date of the mortgage of 1847. Consequently in 1857, when the present suit was filed, neither the first nor the second plaintiff had any cause of action against the seventeenth defendant as respects the recovery of the lands, and we must pronounce that the decree of the Civil Judge is so far not sustainable. With the award of the arrears of rent payable by the seventeenth defendant, we see no occasion to interfere.

We shall therefore modify the decree of the Civil Judge to the above extent, and pronounce the plaintiffs to be entitled to recover their costs from the seventeenth defendant in proportion to the amount allowed.

HOLLOWAY, J.:—Twelve years from the passage of the kánam of which the seventeenth defendant is the assignee not having elapsed, it is quite clear that the plaintiffs have no title to the immediate possession of the land. The principle of recent decisions of this Court that the right to twelve years' enjoyment is not repealed by the non-payment of rent are in accordance both with the old customs of Malabar and with the principles of general jurisprudence which govern a contract of the nature of kánam. I abstain from giving an opinion upon the effect of such negligent dealing with the property as is calculated permanently to impair its value. The findings of the lower Courts upon this matter are much too vague to permit of an opinion whether there was any negligence whatever. Confining myself to the ground taken by the lower Courts, I quite concur with the judgment of my brother Frere.

Appeal allowed.