

ed with the new kánam-holder in suing the parties in possession of the land sought to be recovered, we reverse the decisions of the Courts below with costs payable by the plaintiff.

1862.  
September 22.  
S. A. No. 27  
of 1862.

NOTE.—If the first kánam-holder had denied the janmi's title before the date of the second kanam, *semble* that it would not have been necessary to give him the option of making the further advance.

As to the necessity of giving a first *otti* mortgagee the opportunity of making the further advance required by the mortgagor—see S. A. No. 17 of 1860, M. S. D. 1860, p. 249.

APPELLATE JURISDICTION (a)

*Special Appeal No. 732 of 1861.*

CUTENHO.....*Appellant.*

SOUZA.....*Respondent.*

The Court will not relieve against the forfeiture of a lease caused by non-payment of rent, although the lessor on previous occasions has waived the forfeiture.

THIS was a special appeal from the decision of Ganapaiyya, the Principal Sadr Amin of Mangalur, in Appeal Suit No. 79 of 1861, reversing the decree of the District Munsif of Mangalur in Original Suit No. 707 of 1859. In this suit the plaintiff sought to cancel a *mulgaini* lease of land to the defendant, which provided that the rent, thereby reserved should be paid within the third kist (March 31), and that the lease should be void in case the lessee should fail to pay the rent within the stipulated time, or act in violation of any of its terms, but that if he conformed to those terms, he should enjoy the land from generation to generation.”

1862.  
September 24.  
S. A. No. 732  
of 1861.

*Srinivasachariyar* for the appellant, the plaintiff.

The respondent did not appear.

The Court delivered the following judgment.

This suit was instituted with the view of cancelling a lease granted to the defendant, on the ground that the defendant had violated its terms by failing to pay the rent for

(a) Present Phillips and frere, J J.

1862.  
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the years 1858-59 on or before the date stated in the agreement, which provided that the lease should be void in the event of his not performing the above condition.

The District Munsif found that the defendant had failed to pay in accordance with the lease, and decreed a forfeiture in the terms of that agreement. But this judgment was reversed on appeal by the Principal Sadr Amin, who dismissed the plaintiff's claim, on the ground that he had received payment of the rent when overdue in previous years, and that the defendant therefore on the present occasion, seemed to be entitled to claim some indulgence.

The plaintiff preferred a special appeal against this decision.

We are of opinion that the judgment of the Principal Sadr Amin in this case cannot be sustained. It is admitted that the defendant has legally incurred forfeiture of his lease, and the fact that indulgence was shewn to him by the plaintiff on two previous occasions cannot be held to preclude the latter from now exercising his legal rights. We accordingly reverse the decree of the Principal Sadr Amin and confirm that of the District Munsif. The defendant, now special respondent, will be charged with all costs incurred by the plaintiff in the appeal and special appeal suits.

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