

Achuta Vs. Kali

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Court : Chennai

Decided On : Jul-23-1884

Reported in : (1883)ILR7Mad545

Judge : Hutchins and ;Brandt, JJ.

Appellant : Achuta

Respondent : Kali

Judgement :

Hutchins and Brandt, JJ.

1. The appellant claims as the mortgagee of certain kanamdars not parties to this appeal. The respondent has obtained the usual decree for eviction of the kanamdars on payment of the kanam amount and compensation for improvements less three years ' rent due in arrears. It is admitted that a jenmi can set-off arrears of rent against the kanam amount, but it is contended that he has no right to set-off his rent against the improvements where such improvements have been hypothecated to a creditor of the kanamdar.

2. It seems to us that the creditor can only go against the net amount found due by the jenmi. The appellant claims under kanamdars whose tenure is liable to periodical adjustments, and who could not create any right not subject to the same adjustments. At each adjustment the kanamdar has a right either to a renewal or

to be paid his kanam amount and compensation for improvements less the rent, if any, which may be due by him in arrears. We see no difference in this respect between the kanam amount and the improvements. Indeed it was admitted, and his well known, that the value of improvements is often included at a renewal in the new kanam amount, and, if this were done, it is conceded that the jenmi would have the right of set-off.

3. A kanamdar can pledge all his rights or he can pledge the net sum which may become payable to him at adjustment; but he cannot, it seems to us, say that the compensation is ever payable to him apart from a general settlement; nor can he give a separate title to it as against his landlord. Regarded as a debt, the claim to compensation is a mere inchoate right which only becomes perfected at the eviction and subject to its customary incidents, and if we regard the appellant as a mortgagee of the actual trees or buildings constituting the improvements, his possession is no better. The jenmi has a right to these upon payment of any sum which may be found due at the adjustment. The appellant cannot be in a better position as a mere creditor than he would be after foreclosure, and, if he had foreclosed, he would himself have become the kanamdar. The right of the set-off as against the kanamdar is not disputed.

4. In this particular case the genuineness of the appellant's bond is denied by the respondent, but it is unnecessary to send down an issue since the decree has been found correct as between these two parties. The other defendants seem to have admitted the appellant's claim; but, as they have not been made parties to this appeal, no relief can be given as against them or money which would ordinarily come to their hands.

5. It is perhaps right to point out, with reference to the District Judge's remarks about misjoinder, that the appellant seems to have been made a supplemental defendant by the Munsif under Section 32, as a person whose presence seemed necessary to enable the Court effectually and completely to adjudicate on all the questions involved in the suit. If the Munsif's view of the point now decided had been upheld, the appellant would have been a proper party.

6. The appeal is dismissed with costs.

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