

the plaintiff arose by virtue of the contract entered into by him as manager of the family and for its benefit, coupled with the subsequent receipt of the collections. The fact that the father failed to fulfil his obligation cannot free the family property from its liability for the debt. We dismiss the second appeal with costs. This judgment is in review of our judgment, dated the 20th August 1907.

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KRISHNA  
GHARIYA.

## APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Wallis.

VADAPALLI NARASIMHAM (PLAINTIFF), APPELLANT,

v.

DRONAMRAJU SEETHARAMAMURTHY AND OTHERS

(DEFENDANTS, NOS. 1 TO 9), RESPONDENTS.\*

1907.  
November  
14, 16.  
December 3.

*Limitation Act—Act XV of 1877, sched. II, arts. 139, 144—Landlord and tenant—Transfer of Property Act, s. 116—Representative of a tenant by sufferance a trespasser and cannot, without his consent, be converted by the lessor into a yearly or monthly tenant—Suit for possession against such representative governed by art. 144 and not art. 139 of sch. II of the Limitation Act—Civil Procedure Code, ss. 281, 283—Order passed under s. 281 is not binding on judgment-debtor under s. 283 unless he is a party to the proceedings in which the order was passed.*

A tenant holding over after the expiry of his term becomes a tenant on sufferance and the landlord's assent alone will suffice to convert such a tenancy into a tenancy from year to year or from month to month according to the nature of the original case.

The provisions of section 116 of the Transfer of the Property Act indicate the rule which is *prima facie* applicable in cases not coming under the Act.

*Sayaji Bin Habaji Bhadvalkar v. Umajni Bin Sadoji Ravat* (3 B.11 C.R. App. C.J., 27), referred to.

The representatives of a tenant on sufferance are however mere trespassers, and the lessor cannot, by his assent alone, convert such representatives into tenants without their concurrence.

English and American cases on the point referred to and considered.

\*Second Appeal No. 1628 of 1904, presented against the decree of J. H. Munro, Esq., District Judge of Vizagapatam, in Appeal Suit No. 41 of 1914, presented against the decree of M. R. Ry. A. S. Krishnaaswami Ayyar District Munsif of Yellamanchili, in Original Suit No. 212 of 1903.

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In a suit by lessor to recover possession from a tenant for a term of years, time begins to run under article 139 of the Limitation Act from the expiry of the term, when the tenancy is determined within the meaning of the article.

*Adimulam v. Pir Ravulhan*, (I.L.R., 8 Mad., 424), not followed.

*Seshamma Shettati v. Chickaya Hegade* (I.L.R., 26 Mad., 597), approved.

Article 139 deals only with the case of persons who have been tenants and whose tenancy has determined. The representatives of a tenant on sufferance who enter on possession at his death are not tenants within the meaning of article 139 and a suit for possession against them will fall under article 144.

An order made on a claim under section 281 of the Code of Civil Procedure is not conclusive against or in favour of the judgment-debtor under section 283 of the Code unless the judgment-debtor was a party to the proceedings in which the order was passed.

*Jagan Nath v. Ganesh* (I.L.R., 18 All., 413), approved and followed.

SUIT for land.

The plaintiff alleged that the plaint lands belonged to defendants Nos. 8 and 9 from whom he purchased under a registered deed, dated 24th March 1903, and that the defendants Nos. 1 to 7 who were wrongfully in possession of the said lands refused to surrender the same. Hence this suit.

The facts found by the lower Court were as follows:—

In 1884 Sanyasi, the father of defendants Nos. 2 to 6 obtained possession of the lands under a kadapa or case agreement executed in favour of the predecessors in title of defendants Nos. 8 and 9 for a period of three years. Sanyasi paid rent till 1887, but, after that date he, and after his death defendants Nos. 2 to 6, and from 1899 the first defendant after sale from defendants Nos. 2 to 6 successively remained in possession for more than 12 years without paying any rent. In 1896 the plaint lands were attached in execution of a decree against defendants Nos. 8 and 9. The defendants Nos. 2 to 6 put in a claim petition claiming the lands as their own, but the claim was disallowed on 31st July 1898. Defendants Nos. 8 and 9 were not parties to the proceedings. Defendants Nos. 2 to 6 did not bring a suit under section 283 of the Code of Civil Procedure, but they continued in possession.

The District Munsif held that the effect of the order of 31st July 1898 which was not set aside, was to establish conclusively the title of defendants Nos. 8 and 9, and he accordingly decreed for plaintiff. On appeal, the District Court held that the defendants Nos. 8 and 9 not being parties to the claim proceedings, the order did not enure for their benefit. He therefore reversed the decision of the Munsif. The plaintiff appealed to the High Court.

*V. Krishnaswami Ayyar and V. Ramesam* for appellant.

*T. V. Seshagiri Ayyar and K. Subrahmania Sastri* for first respondent.

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JUDGMENT.—This is a suit to recover certain lands which were held by one Sanyasi the predecessor of defendants Nos. 2 to 6 under certain inamdars. The inamdars granted them to the defendants Nos. 8 and 9, the predecessors of the plaintiff, and subsequently to the grant Sanyasi attorned to the grantees, and on the 7th January 1884 executed a kadappa, exhibit M, in their favour, by which he undertook to hold the lands under them at a yearly rental for three years until the close of the year Vijaya (April 1887).

The kadappa further provided that although he should conduct himself properly for these years according to the terms of the cowle, he should obtain a fresh cowle at the end of the three years.

In 1877 Government resumed the inam, and Sanyasi then attempted to get Government to grant him a patta for the lands at the full assessment, but the 8th and 9th defendants put in a petition alleging that he was only a ryot cultivating under them, and ultimately, Government ordered the patta to be issued to defendants Nos. 8 and 9 (exhibit J), dated the 20th July 1888. Sanyasi, however, did not pay any rent subsequent to the end of the year Vijaya (April 1887), and died in 1889 when defendants Nos. 2 to 6 are found to have entered as his representatives; nor was any rent paid subsequently down to the institution of the suit in 1903.

In these circumstances both the lower Courts have held that the suit was barred, as at the expiry of the term limited by exhibit M. Sanyasi became a tenant by sufferance, and defendants Nos. 2 to 6 who are found to have entered on his death cannot be regarded as deriving any interest from him, but must be regarded as mere trespassers holding adversely to the plaintiff and to his predecessors. In this Court it has been urged that exhibit M not having been executed by the lessor, was not a valid lease for three years under the provisions of the Transfer of Property Act, and that Sanyasi did not in law hold under it, but must be regarded as having become a tenant from year to year. This point was not raised in the lower Courts, and we cannot now assume that there was not a registered counterpart executed in his favour by the defendants Nos. 8 and 9. Assuming that

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Sanyasi held for three years, and on the expiry of the term became a tenant at sufferance, we think the view taken in the lower Courts is right. There is no evidence of any assent on the part of the landlord during Sanyasi's life which could have converted him from a tenant at sufferance into a tenant in the true sense of the term, either at will, or from year to year. At common law the landlord's assent converted a tenant at sufferance into a tenant at will, but the inconveniences of this tenure to both sides disposed the Courts readily to construe tenancies at will as tenancies from year to year. In *Right v. Darby*(1), Lord Mansfield laid it down that 'if there be a lease for a year, and by consent of both parties the tenant continue in possession, the law 'implies a tacit renovation of the contract.' In England this is apparently only a presumption, vide *Dougal v. McCarthy*(2), but in most of the American States, it is now held that a tenant who holds even after his term has expired may be treated by the lessor as a tenant from year to year or a trespasser at his option, but that the tenant cannot elect in which capacity he should be regarded (vide American notes in XV Ruling Cases at pages 541 and 594), and the rule appears to have been laid down as broadly in *Sayaji Bin Habaji Bhadvalkar v. Umaji Bin Sadaji Ravut*(3) before the passing of the Transfer of Property Act. Under section 116 which in our opinion, points out the rule which is *prima facie* applicable even in cases not coming under the Act, where a lessee holds over and the lessor or his representative accepts rent or otherwise assents to the tenant continuing in possession, the lease is, in the absence of a contract to the contrary, renewed from year to year or month to month as the case may be. But while at common law the lessor could by his assent, convert a tenant by sufferance into a tenant in the true sense of the term, he could not, by his mere assent, convert the representatives of a tenant by sufferance, who are mere trespassers into tenants and without their own consent; and section 116 of the Transfer of Property Act which enables the lessor or his representative by his assent to convert a tenant by sufferance into a yearly or monthly tenant, does not enable him by his mere assent to convert the representatives of a tenant

(1) (1) Term Rep., 159.

(2) (1893) I.Q.B.D., 736.

(3) 3 B.H.C.R., App. C.J., 27.

by sufferance into such a tenant. It is therefore unnecessary for us to consider the evidence of assent by the lessor after the death of Sanyasi, the alleged tenant by sufferance, which has been relied on by the plaintiff. The statement made *obiter* in *Adimulam v. Pir Ravuthan*(1) that "if a tenant by sufferance dies and his representative enters and holds 'on' he holds as a trespasser" is, in our opinion, in accordance with all the authorities on the subject, and in the present case, the facts negative any implication that a tenancy was subsequently created by consent of both sides. The decision in *Krishnaji Ramchandra v. Antaji Pandurang*(2) which has been relied on by the appellant, is, in our opinion, distinguishable, and we may further observe that this decision has been dissented from in *Kantheppa v. Sheshappa*(3) and in *Chandri v. Daji Bhai*(4). Although the possession of a tenant by sufferance is not at common law adverse to the landlord (see notes to *Taylor v. Horde*(5), still, as held in the two cases last mentioned, and according to the view expressed in *Seshamma Shettati v. Chickaya Hegade*(6), in a suit by a landlord to recover possession from a tenant for a term of years, time begins to run under article 139 of the Limitation Act from the expiry of the term which must be held to be the time when the tenancy is determined within the meaning of the article, and the decision in *Adimulam v. Pir Ravuthan*(1), can, in our opinion, be no longer treated as good law. Article 139 of the Limitation Act, however, deals with suits to recover possession from a tenant, that is to say, a person who was a tenant until his tenancy determined. The representatives of a tenant by sufferance who enter after his death cannot, in our opinion, be said to have ever been tenants within the meaning of article 139, and a suit against them would appear to fall within article 144. Even so, the present suit is barred as the defendants Nos. 2 to 6 entered in 1889, and the present suit was not instituted until 1903.

One more point remains to be considered. In 1896 the suit lands were attached in execution of a decree against defendants Nos. 8 and 9, and defendants Nos 2 to 6 put in a claim petition which appears from exhibit D, an extract from the Miscellaneous

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(1) I.L.R., 8 Mad., 424 at p. 427.

(3) I.L.R., 22 Bom., 893.

(5) 2 Sm.L.C., at p. 732, 8th Ed.

(2) I.L.R., 18 Bom., 256.

(4) I.L.R., 24 Bom., 504.

(6) I.L.R., 25 Mad., 507 at p. 511.

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Petition Register, to have been dismissed. Defendants Nos. 2 to 6 did not sue within the year and, on this ground, the District Munsif held that they were debarred from asserting their right to the property in the present suit; but the District Judge over-ruled this contention, we think rightly, on the ground that it is not shown that the judgment-debtors, defendants Nos. 8 and 9, were parties to the proceedings in which the order exhibit D was passed.

It has been held in *Guruva v. Subbarayudu*(1) and *Moidin Kutti v. Kunhi Kutti Ali*(2) which was approved by the Full Bench in *Krishnasami Naidu v. Somasundaram Chettiar*(3) that an order passed under section 281 is not conclusive as against the judgment-debtor unless he is a party to the proceedings in which the order was passed. If, therefore, the order in exhibit D had been in favour of defendants Nos. 2 to 6, they could not have pleaded it successfully in the present suit against the plaintiff, as his predecessors, the judgment-debtors (defendants Nos. 8 and 9) were not parties to the proceedings in which the order was passed. It is contended, however, that though the defendants Nos. 2 to 6 could not under these circumstances have taken advantage against the judgment-debtors of an order passed on their claim, still under the words of section 283, an order made against them must be held to be conclusive as between them and the judgment-debtors, even though the latter were not parties. No authority has been cited in support of this contention which is opposed to the decision of *Jagan Nath v. Ganesli*(4), and was, in our opinion, rightly rejected. In the result the second appeal must be dismissed with costs.

(1) I.L.R., 13 Mad., 366.

(2) I.L.R., 25 Mad., 721.

(3) I.L.R., 30 Mad., 335.

(4) I.L.R., 18 All., 413.