
(1910) 04 MAD CK 0036

Madras High Court

Case No: None

Koshikot Pudiya
Kovilagath Sreeman
Vikraman alias Cheriya
Rajah Avergal

APPELLANT

Vs

Chundayil Madattil
Ananta Pattar and
Others

RESPONDENT

Date of Decision: April 28, 1910

Acts Referred:

- Malabar Compensation for Tenants Improvements Act, 1899 - Section 5

Citation: (1910) 20 MLJ 849

Judgement

1. This second appeal relates to improvements. The kanom sought to be redeemed is dated the 3rd of November 1872. It provided that the tenant

shall accept the value of improvements according to local custom. The Subordinate Judge has held that the provision amounts to a special contract

which is unaffected by the Malabar Tenants Improvements Act. He directed an enquiry into the customary rates and has awarded to the

defendants a lesser sum for improvements than the Munsif fixed in accordance with the provisions of the Act. Now, Section 5 of Madras Act I of

1900 declare every tenant entitled to compensation for improvements on ejectment. Section 6 provide that the amount of compensation when

claimed u/s 5 shall be computed according to Ss. 9 to 18. But he may instead claim compensation according to the provision contained in any

contract between the parties. In that case, Section 6 has no application, nor have Ss. 9 to 18. In this case, the tenant claims compensation u/s 5. It

would prima facie seem, therefore, that the rate of compensation is to be determined in accordance with Ss. 9 to 18. But it is argued that Section

19 of the Act validates all contracts prior to the 1st day of January 1886 by implication, and that such contracts should be given effect to in their

integrity. Assuming this to be so, is there any contract in this case prescribing particular rates of compensation? The authority of the Full Bench in

Kerala Varma Valia Rajah v. Ramunni Shangaran ILR (1892) M 162 is against such a contention. It is there pointed out that a mere provision for

the customary compensation is not a special contract such as is contemplated in Section 7 of Madras Act 1 of 1887 which corresponds to Section

19 of the Act of 1900. There is no contract in this case for particular rates to be enforced. It merely states in express terms, what would otherwise

be imported into the contract, that the parties shall conform to the usage of the country. There being no special contract, the tenant is entitled to

compensation according to the Act.

2. This is enough to dispose of this case. But as we have listened to an able argument from Mr. Sundara Iyer on the section of the Act which

relates to the effect of contracts before the 1st of January 1886, we think it desirable to indicate our opinion on the points dealt with.

3. The question is, whether the tenant is entitled to claim compensation under the Act where there is a contract before the Act prescribing lesser

rates. It seems to us he is not precluded from doing so. Section 19 deals with contracts limiting the right to make improvements and to claim

compensation. Contracts before the 1st day of January of 1886, cutting down the right to make improvements, are left untouched and may be

deemed to be valid, if by the law in force at that time they would be treated as valid. There is nothing in Section 19 which deals with a mere

contract regulating the rates of compensation, whether before or after the 1st day of January 1886. And if such a contract is favourable to the

tenant, he could always insist on it despite the provision in Section 6. If a contract as to the rates of compensation is unfavourable to the tenant,

even though it has been entered into before 1886, he is entitled to claim compensation u/s 5, and the rates prescribed in sections 9 to 18 must then

prevail. We do not think that the recent Full Bench decision in *Randu Purayil Kunhisore v. Neroth Kunhi Kannan* ILR (1907) M. 1 is against our

view. The question there was, as would appear from the referring order, whether the making of the improvements after 1886 disentitled the tenant

to the rates fixed by the contract before that date, and the Full Bench held that a contract made prior to the 1st January 1886 was unaffected,

whether the improvements were made before or after. There is no authority for the position that mere rates of compensation fixed by contract

before the Act are decisive as between the parties and preclude the tenant from claiming the rates under the Act if he elects to proceed u/s 5. If, on

the other hand, a contract before 1886 restrained the tenant from making improvements and claiming compensation therefore, such a contract

would prima facie be valid, apart from any question of customary law rendering the restraint invalid.

4. We reverse the judgment of the Subordinate Judge and restore the Munsif's decree with the modification that the defendants Nos. 1 to 3 will

have their costs throughout. The memorandum of objections is dismissed with costs.