

138 Ind. Cas. 114

Madras High Court

Case No: None

Kunjunni Nair and
Another

APPELLANT

Vs

Achutha Menon and
Others

RESPONDENT

Date of Decision: Dec. 2, 1931

Citation: 138 Ind. Cas. 114

Hon'ble Judges: Waller, J; Krishnan Pandalai, J

Bench: Division Bench

Judgement

1. Two questions have been raised in this second appeal. The first is at what rate the tenants have to be compensated for their improvements, The suit was brought on a kanom of 1900, which has been given in renewal of a kanom of 1884. One of the terms of the earlier contract, which was repeated in the later, was that compensation for improvements was to be at half their value. u/s 19 of the Malabar Compensation for Tenants' Improvements Act, contracts entered into before 1st of January, 1886, are not affected by the provisions of the Act, The rate fixed by the contract of 1884 would, therefore, hold good till 1900. The contention of the appellant is that by force of the renewal in that year, it would continue to be effective under the fresh contract. The District Munsif held that the half rate was payable only up till 1st January, 1886, when the Act came into force. The Subordinate Judge in appeal thought that the case was governed by the Full Bench ruling in Rayarappa Atiti v. Kelappa Kurup 39 Ind.Cas.741 : 40 M. 594 : 32 M.L.J. 110 : (1917) M.W.N. 193 : 21 M.L.T. 245: 5 L.W. 617 (F.B.). He, however, found for the tenants on another ground which we need not further consider. The case is, of course, governed as he thought it was, by the Full Bench ruling, the true import of which has, we consider, not been appreciated in some of the subsequent decisions of this Court. In Section A, No. 215 of 1924, Jackson, J., had to deal with a case where a contract of 1884 had been renewed in 1905. The District Munsif, who understood the Full Bench ruling correctly, held that the improvements up till 1905 had to be paid for at the rate fixed in the contract of 1884. The District Judge on appeal found for the tenants on

the ground that the renewal had extinguished the original contract. In second appeal Jackson, J., agreed with the District Judge. Incidentally, however, he observed that the case Rayarappa Atiti v. Kelappa Kurup 39 Ind. Cas. 741 : 40 M. 594 : 32 M.L.J. 110 : (1917) M.W.N. 193 : 21 M.L.T. 245: 5 L.W. 617 (F.B.) did not "cover a case where over and above the original contract another contract has been entered into after the passing of the Act." That was not correct, for there were three contracts of 1876, 1888 and 1898, two of which were after the passing of the Act. In 115 Ind. Cas. 349, [\(Trivangalath Nelliyan\) Paidal Nair and Others Vs. \(Niruliparkam Punnolikandi\) Vaniyankelu and Others,](#) Reilly, J., had a case before him, in which a contract of 1854 was renewed in 1897. The District Munsif awarded compensation at the contract rate of 1884 up till the date of the renewal. His judgment was reversed by the same District Judge on the same ground as in the previous case, but restored by Reilly, J., in second appeal. It does not seem to have been argued that the same rate would prevail after the renewal in 1897. The learned Judge, however, appears to have thought that that would be the effect of the ruling in Rayarappa Atiti v. Kelappa Kurup 39 Ind. Cas. 741 : 40 M. 594 : 32 M.L.J. 110 : (1917) M.W.N. 193 : 21 M.L.T. 245: 5 L.W. 617 (F.B.). In this view he was followed by Kumaraswami Sastri, J., in S.A. No. 1545 of 1926, where there were contracts for the same rate in 1855, July, 1886 and 1910. The learned Judge held that, in the case of renewals, compensation should be given at the rate originally fixed before the Act came into force. He was of opinion, as Reilly, J., was, that that was the effect of Rayarappa Atiti v. Kelappa Kurup 39 Ind. Cas. 741 : 40 M. 594 : 32 M.L.J. 110 : (1917) M.W.N. 193 : 21 M.L.T. 245: 5 L.W. 617 (F.B.) ruling. It becomes necessary for rest, therefore, to consider what really were the facts of that case and what was actually decided; for a decision is authority only for what it decides. The facts were these. There were three contracts in 1876, which were renewed in 1888 and in 1898 on the same terms. What the plaintiffs asked for was compensation-up till 1888 at the rate agreed on in 1876. The trial Court and the first Appellate Court gave them what they asked for. In second appeal the defendants--the tenants relied on a Full Bench ruling reported as Kochu Rabia v. Abdurahman 24 Ind. Cas. 106 : 38 M. 589 : 26 M.L.J. 523 : 1 L.W. 433 : 15 M.L.T. 356 : 26 M.L.J. 523 (F.B.) which laid down that, even where a contract has been entered into before 1st January, 1886, its terms would not be enforceable if they were less favourable to the tenants than those prescribed by the Act. A reference was made to another Full Bench raising the question whether the terms of a contract entered into before 1st January, 1886, were valid and binding, whether the rates were more or less favourable to either party than the rates prescribed by the Malabar Compensation for Tenants' Improvements Act. The Full Bench overruled Kochu Rabia v. Abdurahman 24 Ind. Cas. 106 : 38 M. 589 : 26 M.L.J. 523 : 1 L.W. 433 : 15 M.L.T. 356 : 26 M.L.J. 523 (F.B.) ruling and answered the question referred to them in the affirmative. On this, the referring Bench dismissed the second appeal, subject to a slight modification, which is not now material. What, then, was actually decided was that the plaintiffs were justified in enforcing the contracts of 1876 up till the renewal in 1888. They did not claim anything more than that and it was certainly not decided that the 1876 rates were enforceable after the renewal. We are of opinion that the real scope of the ruling was not appreciated by

Reilly and Kurnaraswami Sastri, JJ., in the cases above referred to. Applying it to the facts now under consideration we hold that the rates in the 1884 contract are enforceable only up to the date of the renewal in 1900 and not after it.

2. The other question, is one that has frequently arisen before. It is as to the practice of court in Malabar District of issuing several go to missions in succession and arriving at valuations by a process of selection from the reports of each Commissioner. In the present case, the Munsif issued two commissions. The report of the first Commissioner was objected to and the Munsif issued a fresh commission on the ground that eoaa trees had not been separately valued. That was a defect that the first Commissioner could have remedied and there was no necessity for the issue of a second commission. In the end the Munsif adopted the report of the second commission. In the end the Munsif adopted the report of the second commission. In appeal this procedure was objected to by the appellant, but the Subordinate Judge brushed the objection aside with contempt and proceeded to arrive at a conclusion based in part on the report of the first Commissioner and in part on that the second. The High Court has repeatedly condemned lax and irregular procedure of this kind and the Subordinate Judge was most certainly not acetified in treating the appellant's objection as much ado about nothing. Still less was he justified in acting on the first report, which, he conceded, should be deemed to have been set aside. The question, then, is what should be done. On the whole, we think it better not to reopen the matter. The reports were made eight or nine years ago and it would put the parties to unnecessary trouble and expense to go into it, again. We adopt, therefore, the valuation fixed by the Subordinate Judge and the Advocates on both sides have agreed to work out the figures at that valuation, on the basis of our finding on the first question. The figure of Rs. 1,022 will be substituted for Rs. 1,462-13-2. The parties will pay and receive proportionate costs in this and the lower Appellate Court.