

(1962) 02 KL CK 0027

High Court Of Kerala

Case No: S.A. No. 967 of 1957

Cheeramma

APPELLANT

Vs

Karthiayani

RESPONDENT

Date of Decision: Feb. 15, 1962

Acts Referred:

- Travancore-Cochin Compensation for Tenants Improvements Act, 1956 - Section 17

Citation: (1962) KLJ 675

Hon'ble Judges: M. Madhavan Nair, J

Bench: Single Bench

Advocate: T.S. Krishnamoorthi Iyer, for the Appellant; S. Bhoothalinga Iyer, for the Respondent

Judgement

M. Madhavan Nair, J.

The plaintiff obtained a decree for redemption of a mortgage in the court of first instance on 29-2-1952. The mortgage deed, Ext. A, recited a contract between the parties negating the mortgagees' right to claim compensation, at redemption, for any improvements on the properties mortgaged. Accepting the contract as binding the parties, the trial court disallowed compensation for mortgagees' improvements on the properties, though it found such improvements to be worth Rs. 177/-. The defendants appealed to the District Court, Alleppey, on the question of their right to compensation for improvements effected on the properties, but did not challenge the decree for possession to the plaintiff. While the appeal was pending in the lower appellate court, the plaintiff executed the decree of the trial court and entered possession of the properties evicting the mortgagees therefrom. Before disposal of the appeal in the District Court, the Travancore-Cochin Compensation for Tenants' Improvements Act, X of 1956, came into force on 31-10-1956 ; and the mortgagee moved a petition on 13-2-1957 claiming compensation under the provisions of that Act. It was contested by the plaintiff, but was allowed by the Additional District Judge. Hence this second appeal by the plaintiff. Before the enactment of Act X of

1956, the right to compensation for improvements was recognised in the Travancore area as an equitable right of a person to be compensated for his special exertions which have increased the value of the property permanently. In *Govinda Menon v. The Dewan* (19 T.L.J. 589, 595) it is declared:

The right to compensation for valuable improvements effected on property is an equitable right based upon the maxim that he who will have equity must do equity.

And in *Avira Tharakan v. Nitakantan* (28 Trav. L.R. 129, 133) Muthunayagam Pillai J. explained the underlying principle in the words of Jessel M.R. in *Shepherd v. Jones* (21 Ch. D. 469, 478) "It is plain, on ordinary principles of justice, that the increase should not go into the pocket of the mortgagor without his paying the sum of money which caused the increase."

2. Being only an equitable right, the claim to compensation for improvements has always been held subject to express covenants between the parties; and the covenant in the present case has been that the mortgagee should not make any claim by way of compensation for improvements.

3. Counsel for the mortgagee-respondents contends that, under Act X of 1956, the right to compensation for improvements has become a statutory right which by Section 17 of the Act overrides any contract to the contrary. The section reads:

7. Contracts affecting compensation for improvements to be invalid:--Nothing in any contract entered into before the commencement of this Act shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provisions of this Act.....

(This section has been re-enacted in the Act 29 of 1958 making like contracts entered subsequent to the Act also nugatory in effect)

4. The argument is that the expression "Nothing in any contract.....shall take away the right" should be taken disjunctively with both the expressions "to make improvements" and "to claim compensation for them....." and therefore the mortgagee is now entitled to claim compensation for improvements effected though in contravention of the covenant in the mortgage deed. I do not accept this interpretation of the Section. The section envisages a primary right, and a remedial right. The primary right is the right to make improvements and the remedial right is the right to claim compensation for them. The verbal sense in which the word "claim" is used in the section indicates that it is only used in the remedial sense. The remedial right to claim compensation for improvements must necessarily depend on the primary right of the party to make improvements on the land, and cannot have an independent existence. Only on establishing the primary right can a question of any remedial right based on such primary right arise; and it is only then that the latter clause in the section would come to any application. The expression "Nothing in any contract entered into before the commencement of this Act shall

take away or limit the right" is, by its very terms, an emancipatory provision releasing the tenant or mortgagee from the bondage of the contract and the primary right of the tenant "to make improvements" and not the remedial right which has no independent existence apart from the other. The contention that the expression should be applied disjunctively to each right has therefore no force.

5. The use of the auxiliary word "shall" indicates that only prospective effect is contemplated in the section. It indicates that, whatever be the covenant between the parties, after the commencement of the Act, there shall be no restraint on the right of a tenant to make improvements on the land and to claim compensation therefor at eviction. Obviously, this new state of affairs is ushered in only by the commencement of the Act, with effect from such commencement. The word "shall" is conclusive in this respect.

6. Admittedly, the improvements which the defendant-mortgagees have effected on the suit property were made before 1954.

7. Neither the decree nor the execution in regard to their eviction in 1954 from the land has been challenged in appeal by the mortgagees. Based on the finality of the eviction effected in 1954, long before the commencement of the Act X of 1956, counsel for the plaintiff contended that the tenant has lost his right to claim compensation for improvements which is exercisable only at eviction. As I have repelled the right of the mortgagees in the present case to any compensation for improvements effected contrary to the covenant in the mortgage deed, the question whether they had lost their right by their submission to actual eviction from the land does not arise for consideration in this case.

8. Suffice it to hold that in regard to the improvements effected before the commencement of the Act X of 1956, the parties are still governed by their contract and that the effect of such contract has not been affected by Section 17 of Act X of 1956 or of Act XXIX of 1958 retrospectively. The mortgagees in the present case are not therefore entitled to any compensation for improvements. In the result, the remittal ordered by the lower appellate court is vacated and the decree of the trial court is restored. In the peculiar circumstances of this case, the parties shall suffer their respective costs of this appeal.