

(1959) 09 KL CK 0034

High Court Of Kerala

Case No: A.S. No. 371 of 1955 (E)

Vareed and Others

APPELLANT

Vs

Bappu and Others

RESPONDENT

Date of Decision: Sept. 30, 1959

Acts Referred:

- Kerala Compensation for Tenants Improvements Act, 1958 - Section 17(ii)

Citation: (1959) KLJ 1241

Hon'ble Judges: S. Velu Pillai, J; M. S. Menon, J

Bench: Division Bench

Advocate: T.S. Venkiteswara Iyer and C.S. Ananthakrishna Iyer, for the Appellant; M.S. Kurian for 3rd Respondent, O.L. Abraham for 4th Respondent, M.P. Varghese for 13th Respondent and N.D.P. Namboodiripad for 14th and Addl. 16th Respondent, for the Respondent

Final Decision: Dismissed

Judgement

Velu Pillai, J.

The plaintiffs, who are respondents 1 to 6, sued in O.S. 78 of 1951, in the District Court, Parur, for the redemption of a mortgage, impleading also defendants 12 to 14, the lessees under the mortgagee, who are the appellants herein. The mortgagees and the appellants set up a claim for the value of improvements, payable to them. The lower court decreed a sum of 739 odd rupees in all, towards the value of improvements for the plantations, and held, that the appellants are not entitled to the value of a building which they had put up. The appellants have now claimed before us, the full value for the plantations, and in addition, the value of improvements of the building which was denied to them. It may be mentioned, that the mortgagees also sued the appellants in O.S. 103 of 1953 for eviction, on the basis of the lease under which the latter are holding the property, and the lower court has, as between the parties therein, fixed the share of the appellants in the value of improvements at Rs. 145 odd; the appellants have therefore preferred the

connected appeal A. S. 370 of 1955, which we have ordered to be stayed under the provisions of Act I of 1957. In this appeal, the appellants have filed C.M.P. 4299 of 1959 for permission to raise an additional ground, that they are entitled, before eviction is ordered, to the value of improvements for the plantations, computed in accordance with the provisions of the Kerala Compensation for Tenants Improvements Act 1958, Act XXIX of 1958, to be referred to hereinafter as the Act, and not merely to the value, as now determined by the court below, in accordance with the rates prescribed by the contract of lease for valuing the plantations, or with the share, specified, of the lessees in the value. We have allowed the point to be raised.

2. Two questions arise for decision, first, whether at this stage, the value of the trees can be allowed to be assessed, in accordance with the provisions of the Act, and secondly, whether the appellants are entitled to the value of the building. On the first question, the Learned Counsel who appeared for the 10th defendant, who is a part-owner of the equity of redemption, and is also one of the holders of the decree passed by the lower court for redemption, has raised the objection, that the appellants, not having made a claim in this appeal for the value of improvements as against the mortgagors, but having restricted it as against the mortgagees only, though for the whole amount decreed, cannot now be permitted to claim the benefit of the Act; in other words, the decree of the court below has become final as against the mortgagors. Apart from the valuation of the subject matter of the appeal, there is nothing, which the appellants have done, to limit the scope of the appeal, and grounds 8 and 9 in the appeal memorandum are sufficiently wide to admit the present contention. The applicability of the Act was not disputed on any other ground; if so, before eviction can be ordered by a final decree to be passed, the appellants are entitled to be paid the value of improvements in accordance with the Act. See *Kunjukrishnan v Krishna Pillai*, 1958 KLT 645-1958 K.L.J. 984. The objection raised cannot stand. The case has to go back for a fresh assessment of the value of improvements for the plantations.

3. On the second question," the court below over-ruled the claim of the appellants for the value of the building on account of a condition in the deed of mortgage, which provided for the payment of the value of the plantations only, and not of any other improvements on redemption. In our opinion, this is a contract, though implied, which takes away the right of the mortgagees to erect a building, and which, we regard as sufficient to attract proviso (ii) of Section 17 of the Act, in order to negative the claim for the value of the building. The mortgagees who are bound by the terms of the mortgage could not confer a larger right on their tenants than what they themselves had; indeed, the very lease deed under which the appellants are holding had taken away any right in them to make improvements in the nature of a building. We overrule the appellants' claim to the value of the building. The tenth defendant has preferred a cross-objection, objecting to the direction in the decree of the court below, that he must, if at all, execute the decree for redemption

within a period, after the expiry of which, plaintiffs 3 to 6 alone would have the right to do so. We think, this direction was unnecessary, and we therefore vacate the same; whoever deposits the redemption price, may execute the decree. No other point was pressed in the appeal or in the cross-objection. Subject to the above, and to the direction to the court below to decide the issue as to the value of improvements payable for the plantations in accordance with the provisions of the Act, the decree passed by it is affirmed, and the appeal is dismissed. The cross-objection is disposed off as above. There will be no order as to costs in the appeal, and in the cross-objection.