

(1912) 10 MAD CK 0008
In the Madras High Court

A. Thupran alias Kumaran	APPELLANT
Vs	
Haji Esa Sait's son, Mamad Kasim Sait, and Another	RESPONDENT

Date of Decision : 22-10-1912

Acts Referred:

Malabar Compensation for Tenants Improvements Act, 1899 — Section 5

Citation : 17 Ind. Cas. 433

Hon'ble Judges : Sundara Aiyar, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. We agree with the learned Judge that the question whether the alienation by Tulsu was for family necessity was not raised in the lower Courts.

We must, however, hold that he was wrong in not allowing to 2nd defendant compensation for the improvements on the lands in 2nd defendant's

possession. According to Section 5 of the Malabar Compensation for Tenants Improvements Act, "every tenant shall, on ejectment, be entitled to

compensation for improvements which have been made by him, his predecessor-in-interest, or by any person not in occupation at the time of the

ejectment who derived title from either of them, and for which compensation has not already been paid." Both the lower Courts have found that the

2nd defendant was in possession under the lease, Exhibit B. It is immaterial whether the improvements were made by the 2nd defendant himself or

by any other person in possession before him. It is quite sufficient that the improvements are on the land even if they were made by some previous

occupant, and it was not the case of either party that any body except the 2nd defendant was in occupation at the time of the suit. Exhibit B shows

that the lands were waste at the time of the lease, so that it is clear that the improvements came into existence after the plaintiff gave the lease to the

1st defendant. We must, therefore, modify the order of the learned Judge and the decrees of the Courts below by awarding to the 2nd defendant

Rs. 458-15-6, the amount which the Commissioner found to be the value of the improvements. The decree for ejectment will be conditional on the

payment of this amount.

2. The parties will bear their own costs throughout.