
(1951) 12 MAD CK 0022
In the Madras High Court
Case No : Second Appeal No. 1231 of 1948

Abdul Kadir Haji	Vs	APPELLANT
Muhammad and Another		RESPONDENT

Date of Decision : 10-12-1951

Acts Referred:

Malabar Compensation for Tenants Improvements Act, 1899 — Section 10, 13, 15(1), 9

Citation : AIR 1952 Mad 859 : (1952) 65 LW 336 : (1952) 1 MLJ 547

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : N.K. Nambiar and M. Sekhara Menon, for the Appellant; N.R. Sesa Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—The plaintiff who is the appellant in this second appeal was a mortgagor whose suit was for redemption of the mortgage in favour of the first defendant, and the lower courts in ordering redemption have directed him to pay the value of a large number of cashewnut trees planted on the mortgaged property by the first defendant. The basis of the calculation was on the footing that the cashew-nut trees are fruit-bearing trees as understood according to Section 9 of the Malabar Compensation for Tenants Improvements" Act and not timber trees as contemplated by, Section 10 of the same Act.

Mr. M. K. Nambiar for the appellant contends that in view of the fact that u/s 15 (1) (b) (ii) of the Act only cocoanut trees areca-nut trees, jack trees and peppervinos are mentioned for purposes of determining the amount of compensation to be awarded under the Act as fruit-bearing trees, it should be held that cashew-nut trees are not fruit-bearing trees. I am inclined to hold that the enumeration of the trees in S. 15 is not exhaustive. What is contemplated is that the Legislature in enacting the provisions of the Malabar Compensation for Tenants" Improvements Act laid down certain well known trees as fruit-bearing trees for the purpose of assessing the compensation. Such enumeration is

certainly not exhaustive because in addition to the various kinds of trees mentioned above there are other trees which are admittedly fruit-bearing trees and which add to the value of the holding.

For example, a tamarind tree has been held to be such in "58 Mad L. J Short Notes 31". It has also been held by this court that graft mango trees which are not useful as timber but produce large quantities of fruit should be held as fruit-bearing trees. In addition, we have the provisions of Section 7(4) of the Malabar Tenancy Act as well as Section 18 of the Act which lay down that trees of this kind can be termed as fruit-bearing trees. Mr. Nambiar invited my attention to the decision in -- *Ambi and Another Vs. Kunhikavamma and Others*, where "palmyra trees have been held to be non-fruit bearing trees. There can be little doubt that excepting a very limited category of palmyra trees the rest of them do not yield any fruit and the decision that a palmyra tree should be termed as a timber tree cannot be questioned on that score.

It might be that no table showing the method of valuation of cashew-nut trees has been prepared u/s 15 of the Malabar Compensation for Tenants' Improvements Act. But that would not exclude the possibility of the trees other than the three categories mentioned above from being fruit-bearing trees. In order to apply S. 9, all that is necessary is that the improvement should not be one to which Section 13 applies. There is no doubt whatever that Section 13 does not apply to cashew-nut trees. I therefore agree with the lower courts in holding that the cashew-nut trees have to be valued on the basis of fruit-bearing trees. The second appeal fails and is dismissed with costs.

2. No leave.