

(1917) 08 MAD CK 0027
In the Madras High Court

C.S. Parameswara Ayyan

APPELLANT

Vs

Kittunni Valia Mannadiar alias Puthunana Panikkar and
Another

RESPONDENT

Date of Decision : 31-08-1917

Acts Referred:

Malabar Compensation for Tenants Improvements Act, 1899 — Section 5, 6

Citation : 43 Ind. Cas. 173 : (1917) 33 MLJ 591

Hon'ble Judges : Saiasiva Aiyar, J;Phillips, J

Bench : Full Bench

Judgement

Saiasiva Aiyar, J.—The 2nd plaintiff in this suit for redemption is the appellant before us. The two questions for consideration are, (1)

whether a mortgagee tenant to whom the Malabar Compensation for Tenants' Improvements Act applies is bound to pay mesne profits from the

date of tender of the amount due under the mortgage into court when it was found that the money so tendered sufficiently covered the

compensation for improvements also, (2) Whether the 2nd plaintiff melcharatdar is under the circumstances of this case entitled to his costs.

2. The answer to the first question depends entirely upon the construction to be placed upon Sections 5 and 6 of the Malabar Improvements Act (I

of 1900) and especially Section 5. Omitting the words immaterial for our purpose, Section 5 is as follows: (1) "Every tenant" (which includes a

mortgagee in possession) "shall on ejectment be entitled to compensation for improvements for which compensation has not already been paid; and

every tenant to whom compensation is so due shall be entitled to remain in possession until ejectment in execution of a decree or order of court".

(2) "A tenant" (Mortgagee) "so continuing in possession shall during such

continuance, hold as a (mortgagee)"" ""tenant subject to the terms of his mortgage"".

3. I think the language is plain that till compensation is actually paid (mere tender not sufficing) the mortgagee remains in possession as mortgagee

(not as trespasser or trustee) notwithstanding a valid tender. It is not difficult to find reasons for this exceptional favouring of the Malabar tenants by

the legislature there being other such exceptional provisions in the Act, such as the re-opening of decrees in execution in the matter of

compensation for improvements, the allowing of a mortgagee or tenant to continue to make improvements notwithstanding the passing of a decree

and so on. Mr. Ramachandra Aiyar, the learned Vakil, for the appellant relied on the decision of two learned Judges of this Court (Coutts Trotter

and Seshagiri Aiyar, JJ.) reported in Chami v. Anu Pattar (1916) M.W.N. 160. With the greatest respect, I am unable to agree with that decision.

In the judgment of Coutts Trotter, J., Section 5 is quoted but without the reproduction of the clause "" for which compensation has not already been

paid."" That learned Judge was not inclined to adopt the literal construction of the section, because he thought that that was ""a wholly unreasonable

construction of the Act and would permit wholly unreasonable conduct on the part of the tenant"". Mr. Justice Seshagiri Aiyar, says that ""under

Section 5 Clause 2, the tenant is bound to pay the mesne profits"". As far as I could see, under Clause 2 he is not bound to pay the mesne profits

but only the purapad mentioned in the kanom mortgage. Even in a previous portion of the learned Judge's judgment, he says that where the

mortgage money has been tendered and where the relation of landlord and tenant subsists between the parties, "" the liability to pay mesne profits

to the landlord also subsis"s. Of course, rent is usually paid out of the mesne profits (though rent may have to be paid even if the tenant is unable to

obtain any mesne profits) and probably that is what the Judge means in the former portion of his judgment about mesne profits being payable to the

landlord, mortgagor. The question of unreasonableness of consruction is relevant in considering the meaning of a statutory provision, only where

the language is reasonably capable of two constructions, one reasonable and the other unreasonable (see Maxwell on the Interpretation of

Statutes, Chapter VIII). Supposing, however, there is some ambiguity in an act,

then the preamble and the object of the Act can be referred to as

has been done by the Privy Council recently in the *Urlam Case*, *Kandukuri Balasurya Prasada Row v. Secretary of State for India* (1917) 33

M.L.J. 144. In *Administrator General of Bengal v. Premlal Mullick* ILR (1895) C. 788, their Lordships of the Privy Council state that the

proceedings of the legislature which resulted in the passing of an act, cannot be referred to as legitimate aids to the construction of a particular

section which was construed in that case. In that case, however, the language according to their Lordships of the Privy Council, was quite plain. As

I said already the language of Section 5 seems to be quite plain. In a case which I recently decided sitting with Mr. Justice Spencer (*A. A. A. O.*

No. 123 of 1914) where mesne profits were claimed on the ground that the money had been paid into court, I stated, quoting Clause 1 of Section

5 as also Clause 2, that mortgagee is not liable for mesne profits as a trespasser because till actual ejectment in execution of the decree of court,

he continues to be mortgagee. In the case of *Kanaran v. Chiruta* ILR (1914) M. 954, it was held that the rights of a purchaser in execution of a

mortgage-decree under the Transfer of Property Act cannot prevail against the right of a subsequent tenant under the mortgagor to be paid his

compensation for improvements before ejectment. Assuming for a moment that the language of Section 5 is not plain, Maxwell at page 43 quotes a

Privy Council case in which their Lordships referred to a portion of the proceedings connected with a Statute in its passage through the legislature

for interpreting an ambiguous expression contained in it. Their Lordships referred to the introduction of a proviso by the Lords in the Act (i. e.,

Uniformity Act, 13 & 14 Car, II c. 4) and its rejection by the Commons and to the reasons assigned by the latter for the rejection as an indication

of the intention of the legislature. Now when Section 5 of the Act was before the Legislature, the Hon^{ble} M.R Ry. P. Ratnasabapathy Pillai

wanted to amend Section 5 by adding after the words "is so due" the words "but is not tendered" so that if that amendment be made, the tenant

would not be entitled to possession after such tender and would not be entitled to remain in possession as tenant or mortgagee until ejectment in

execution of the decree of court. In moving this amendment, he said "the object of my amendment is to provide for cases in which reasonable

compensation might be tendered by the landlord to the tenant and the tenant chooses to refuse the compensation so tendered. Even in such a case

the tenant might contend, as the section stands that the compensation is still due to him and on that ground he may insist upon continuing in

possession till he is evicted by court's decree or order. I did not think that such is the intention of the select committee which drafted this portion. I

think it is better to make the meaning clear. If a reasonable compensation is offered by the landlord to the tenant and if the tenant chooses to refuse

it, he does so at his peril." These words " he does so at his peril " occur also in the judgment of Coutts Trotter, J., in Chani v. Anu Pattar(1916)

M.W.N. 160, The Honourable Mr. Bashyam Iyengar replied in the Legislative Council "I may state that this point was very anxiously and

carefully considered in the Select Committee and if it were feasible to practically give effect to the suggestion made by the Honourable Mr.

Ratnasabapathy Pillai, it would have been done. But the ascertaining of the amount of compensation under the provisions of this Bill is so intricate

that it is impossible for either party to ascertain it, but both the landlord and the tenant may mutually agree as to the amount, which case is provided

for by the proviso to Section 19. It is impossible for the landlord to know what amount to tender and it is still more impossible for the tenant to

know whether the amount tendered by the landlord is the amount that he is entitled to on eviction. But so long as the parties do not agree as to the

amount, the insertion of the words proposed in Section 5 will be one which would give rise to great complication and the result will be that the

tenant might lose the value of the improvements effected by him since the date of the tender. The tenant might have bona fide considered that the

amount tendered as insufficient, but it may turn out that when the improvements are valued the amount tendered was correct or was more than the

amount found on calculation....Therefore I submit that while my honourable friend's suggestion is sound in principle and in theory yet having regard

to the peculiar nature of this Act and the peculiar custom of Malabar and the difficulty of ascertaining the amount of compensation due when the

parties do not amicably settle it, the insertion of any such words as those proposed in this section will, to a great extent, defeat the object of this

Bill". Then the amendment was put to the Council and lost. I think the Legislature clearly intended that the amount shall remain due the tenant till he

is actually paid or (if he would not take it though tendered or paid into court) till he is ejected in execution of a decree or order of court after the

payment of the amount into court in pursuance of an order u/s 6(1) and (3). The first question is therefore decided against the appellant.

4. The second point, namely, the question of costs, follows the finding on the first point, and even if the first point had been decided in the

appellant's favour, it being clear from the 27th paragraph of the first Court's judgment that the parties were in dispute as to whether one of the

taks in plaint item No. 6 was or was not included in the mortgage and it having been found that it was not so included and that the plaintiff's claim

to redeem that tak was therefore unsustainable the order of the first court directing the parties to bear their respective costs can be fully supported

on this ground.

5. In the result, the second appeal wholly fails and is dismissed with costs.

Phillips, J.

6. I agree.