

(1967) 11 KL CK 0006
In the High Court Of Kerala
Case No : S.A. 309 of 1964

Kesavan Nair Krishnan Nair and Another	APPELLANT
Vs	
Kanakku Kumara Pillai Kunjan Pillai and 2 Others	RESPONDENT

Date of Decision : 16-11-1967

Acts Referred:

Kerala Compensation for Tenants Improvements Act, 1958 — Section 2(b)

Citation : (1968) KLJ 333

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Advocate : S. Easwara Iyer, L.G. Potti, C. S. Rajan, P. Sankarankutty Nair, for the Appellant; P. Krishnamoorthy, for the Respondent

Final Decision : Dismissed

Judgement

V. Balakrishna Eradi, J.—In this appeal preferred by defendants 1 and 2 in a suit for redemption of a usufructuary mortgage the only question raised before me is whether the defendants are entitled to be paid value of improvements in respect of the conversion by them of a portion of the Nilam into garden land. Although the trial court upheld the claim of the defendants for value of improvements, the lower appellate court held that the conversion of paddy land into a reclaimed garden does not constitute improvement" within the definition of the term in Kerala Act 29/1958 and that therefore the plaintiff is not liable to pay any compensation for such work done by the defendants. On behalf of the appellants, learned counsel relies upon the provision contained in the mortgage-deed Ex. P-I where under the mortgagee is authorized to reclaim an extent of 14 cents situated in the southern portion of the mortgaged property and to convert it into a garden and also to put up buildings and structure thereon. What has however happened is that the defendants left the southern portion severely alone but reclaimed an extent of 14 cents in the northern portion of the property. This work is certainly not covered by the provision in Ex. P-1 and the mortgagor has not contracted to pay for such reclamation work. The only question that remains is

whether the mortgagee is entitled to get compensation for the work so done by him treating it as an improvement under the Kerala Compensation for Tenants Improvements Act. In *Sankaran v Sankaran Channar* 1959 K. L. T. 1259 Vaidialingam, J. held that the conversion of a double crop paddy land into a garden land, however desirable it may be from the point of view of the mortgagee or the tenant, is a substantial alteration of the character of the holding and cannot therefore be considered to be an "improvement" in any sense of the term-. The learned Judge referred to the definition of the expression, "improvement" contained in Section 2 (b) of the Act and held that such a conversion of paddy land into garden land cannot constitute the "improvement" because the work will not be consistent with the purpose for which the holding was mortgaged.

2. The same view has been taken by Velu Pillai, J. in *Markose v Ponnamma and Others* 1962 K. L. J. 1061). The learned counsel for the appellants submitted that the view taken in the aforesaid decisions is incorrect and requires reconsideration. I do not however, see my way to accept this contention. I am in respectful agreement with the aforesaid pronouncements and applying to the present case the principle laid down therein, it has to be held that the defendants are not entitled to claim compensation in respect of the work of reclamation done by them in the northern portion of the mortgaged property.

3. It was further contended by the learned counsel for the appellants that the present case is distinguishable on facts from those concerned in the rulings aforementioned because, according to him, as per Ex. P-I there was an implied permission given by the mortgagor to the mortgagee to effect reclamation in any portion of the mortgaged property and the specification of the southern portion was only in the nature of a mandatory direction that that portion should necessarily be converted by the mortgagee into a garden. The recitals in Ex. P-I do not however, warrant such an interpretation. The specification of the southern portion was an express limitation of the right given to the mortgagee to effect the conversion of a part of the paddy land into garden land by imposing the restriction that such work shall be carried out only over an extent of 14 cents situated in the southern portion of the property. No general permission whatever can be implied from this recital as authorizing the mortgagee to convert into garden whatever portion of the property he chose. In the result, the Second Appeal fails and is dismissed with costs. The defendants will have three months" time from today to reconvert the property into its original state. Leave granted.