(1911) 11 MAD CK 0034

In the Madras High Court

Nechooli Parie Amma APPELLANT

Vs

Chathanadath Kalassin Kunhikandan alias Moothoran and Others RESPONDENT

Date of Decision : 09-11-1911

Acts Referred:

Malabar Compensation for Tenants Improvements Act, 1899 — Section 19

Citation : (1912) 22 MLJ 221

Judgement

1. The question raised in this case is whether the defendants holding the lands sought to be recovered in the suit on a kanom executed in the year

1884, are disentitled under the terms of the kanom instrument, Exhibit A, to recover compensation for chamayams or buildings worth more than

Rs. 25. The first defendant is the purchaser in court auction of the kanom right. The second defendant is a sub-mortgagee under the original

kanomdar holding under a document executed by him before the date of Exhibit A (Exhibit A being the renewal of an earlier kanom). The 6th

defendant is found by the lower appellate court to have constructed his buildings worth more than Rs. 25 about the year 1883. The 13th and 14th

defendants who also raised buildings worth more than Rs. 25 obtained an assignment of a portion of the lands included in the kanom in 1907,

shortly before the suit. The lower courts held that the defendants mentioned above were not bound by the terms of Exhibit A which they held

would disentitle them to claim a larger compensation than Rs. 25. The grounds on which this finding is based are:

(1) That Exhibit B, the melcharth executed in favour of the plaintiff, authorised him to pay the value of buildings erected by the prior holders without

any limitation.

(2) That the jenmi, 17th defendant, in bringing to sale the rights of the original kamomdar under Exhibit A described them as ""the kanom Kushikur

and Chatnayam and all other rights thereon"" over the property in question possessed by the kanomdar.

(3) That the 1st defendant who before his purchase of the kanom took the mortgage, Exhibit III, in 1887 from the original kanomdar had no notice

of any restriction contained in the kanom document of the kanomdar''s rights to compensation for buildings.

2. We are of opinion that none of these grounds support the conclusion arrived at by the lower courts. Exhibit III states that the kanom document,

i.e., Exhibit A, was handed over to the mortgagee who must therefore be held to have had full notice, of the provisions of Exhibit A. The sale

certificate, Exhibit I cannot be held to confer on the 1st defendant anything more than the rights, which the judgment-debtor, whose rights he

purchased, actually possessed. The provision in Exhibit B authorising the plaintiff to pay the value of chamayams to which the kanomdar might be

entitled, could not enhance the rights possessed by the kanomdar under his own title deed. Mr. Anantakrishnier, for the resp6ndents, however,

seeks to support the judgment of the lower courts on the ground that the provision in Exhibit A restricting the kanomdar''s right to make

chamayams and recover compensation for them, is not enforce-able on account of the provisions of the Malabar Tenants Improvements Act, I of

1900. In Koshikot Pudia Kovilagath Sree Manavikraman alias Cheriyah Rajah Avergal v. Chundayil Madathil Ananta Pattar ILR (1910) m. 61

this court held that under the provisions of that Act a tenant is entitled to the full value of his improvements according to the rates provided in

Sections 9 to 13, and that Section 19 does not cut down his right under Sections 2 and 6 to the value of his improvements according to the rates

prescribed in the Act even where a contract was entered into before the 1st January 1886, limiting his right with respect to the amount of

compensation claimable by him. We adopt the law as laid down in that judgment, and if Exhibit A can be rightly held to have merely limited the

amount of compensation to which the kanomdar was entitled for buildings, we are of opinion that the restrictive provision in that document cannot

be enforced. Mr. Rosario, for the appellant, contends that the document really goes further and restricts the kanomdar''s right to erect buildings at all, if they are worth more than Rs. 25, and argues that Section 19 of the Act does not render such a contract entered into before the 1st of

January 1886, invalid. The respondent contends that under Sections 5 and 6 the kanomdar is absolutely entitled to the value of all improvements,

and that Section 19 which does not expressly provide that a contract before the 1st January 1886, restricting the right to make improvements is

valid, cannot be taken to modify the provisions of Sections 5 and 6. We are unable to uphold this argument. We are bound to construe the Act so

as to give some effect to every section of it. On the construction contended for by Mr. Anantakrishnier Section 19 would be unnecessary and if we

are to regard it as enacted exabundant cautela, as suggested by him, then the words "" after the 1st day of January 1886"" qualifying the contracts

referred to in the section would be unnecessary if his construction be maintained. We are bound to hold that contracts prior to January 1886,

limiting the right to make improvements, are not affected by the section. It may be that Section 19 did not intend to pronounce any agreements

between a jenmi and his kanomdar as to what should be regarded as improvements suitable to the holding, invalid. The question then that we have

to decide is, what is the true nature of the provision in Exhibit A with regard to buildings to be erected by the kanomdar ? The provision is in these

terms: "" If I make chamayams thereon exceeding Rs. 25 in value, I shall only remove and take them at the time of surrender and shall not demand

the value of improvements therefor."" The meaning of the agreement, in our opinion, is that the tenant''s only right with respect to buildings of more

than Rs. 25 in value which he might erect is to remove them and that he is not entitled to demand their value. The provision for removing is merely a

recognition of the right which a kanomdar has always possessed to remove any improvements made by him. See Angammal v. Aslami Sahib

(1909) 21 M.L.J. 891. We are of opinion that the agreement that he should not demand the value of buildings worth more than Rs. 25 means

nothing more than that be should not demand more than Rs. 25 for any buildings erected by him. We do not think that it was intended that if the

tenant was content with Rs. 25 for a building worth more than that amount, the landlord should be entitled to refuse to pay him anything for it. The

object of the clause appears to be to provide a limitation on the amount, which the tenant was entitled to claim for improvements and not to prevent him from constructing any buildings worth more than Rs. 25 at all. No right is given to the jenmi to require the removal of buildings worth more than Rs. 25 and to restore the land to its condition before the erection of the building. In other words, the object was not to restrain the kanomdar from building but to restrict his right to compensation if he built. The agreement was therefore one regulating and restricting the amount of compensation to which the kanomdar was entitled for buildings erected by him. The decision in Cheriya Rajah v. Ananta Pattar ILR (1910) M. 61 is therefore applicable to the case. We uphold the judgment of the lower appellate court on this ground and dismiss the second appeal but in the circumstances without costs.