
(1911) 11 MAD CK 0052
In the Madras High Court

Neechooh Paru Amma

APPELLANT

Vs

Chathanadath Kalasseri Kunhikandan alias Moothoran and
Others

RESPONDENT

Date of Decision : 09-11-1911

Acts Referred:

Citation : (1913) ILR (Mad) 410

Hon'ble Judges : Sundara Ayyar, J;Benson, J

Bench : Division Bench

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 sixth defendant is found by the Lower Appellate Court to have constructed his buildings worth more than Rs. 25 about the year 1883. The thirteenth and fourteenth 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, the seventeenth defendant, in bringing to sale the rights of the original kanomdar under Exhibit A described them as "the kanom kuzhikur and chamayam and all other rights thereon" over the property in question

possessed by the kanomdar, and

(3) that the first 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 can 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 first 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. Anantakrishna Ayyar for the respondents, however, seeks to support the judgment of the Lower Courts on the ground that the provision in Exhibit A restricting the kanomdar's rights to make chamayams and recover compensation for them, is not enforceable on account of the provisions of the Malabar Tenants' Improvements Act, I of 1900. In *Kozhikot Pudiya Kovilagath Sreemana Vikraman v. Chundayil Modathil Ananta Patter I.L.R.*, (1911) Mad., 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 18, and that Section 19 does not cut down his right under Sections 5 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. Rozario 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 he 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. Anantakrishna Aiyar Section 19 would be unnecessary, and, if we are to regard it as enacted *ex abundante cantela* 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 the 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 *Angammall Vs. Malic Mahomed Saeed Aslami Sahib*, . 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 he 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 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 to be entitled, for buildings erected by him. The decision in *Kozhikot Pudiya Kovilagath Sreemana Vikraman v. Chundayil Modathil Ananta Patter* I.L.R., (1911) Mad., 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.