

(1912) 12 MAD CK 0014
In the Madras High Court

Oraivukandiyil Parkum Elavana Tholan and Another	APPELLANT
Vs	
Palankandi Kunhikutty	RESPONDENT

Date of Decision : 18-12-1912

Acts Referred:

Citation : (1913) 24 MLJ 93

Judgement

1. Defendants Nos. 2 and 3 are the petitioners before us. The suit was brought by the plaintiffs for recovery of lands leased to the Defendant's

Karnavan. The defendants claimed the value of improvements. The lease was made in 1885, that is before the first Malabar Tenants Improvements

Act came into force in January 1886. The Marupat provided for certain rates of compensation to be paid in respect of cocoanut trees, areca, jack

trees and pepper vines to be planted by the tenants. The Munsif following the Full Bench case of Randipurayil Kunhisore v. Narothi Kunhi

Kannan ILR (1907) M. 1 held that the contract between the parties governed the rate of compensation to be allowed to the defendants and

decreed compensation according to the rates provided for in the marupat, Exhibit A. His judgment was pronounced on the 28th October 1910.

After he pronounced judgment there was reported Sriman Vikraman v. Ananda Patter ILR (1910) M. 61, the decision of a Division Bench of this

Court which contained an observation that the Full Bench Decision in Randipurayil Kunhisore v. Narothi Kunhi Kunnan ILR (1907) M. 1 did not

prevent a tenant from claiming compensation for improvements according to the Act of 1886 even though the marupat or lease was effected before

January 1886. On the strength of this decision, the defendants applied to the Munsiff for a review of judgment in the beginning of March 1911. The

review was granted by the learned District Munsiff. The plaintiff applied to the District Court against the order granting the review. The learned

District Judge reversed the Munsiffs order on the ground that sufficient cause had not been shown by the defendants for the grant of a review, that

the Full Bench ruling in *Randipurayil Kunhisore v. Narothis Kunhi Kunnan* ILR (1907) M. 1 clearly held that the tenant who came under a lease

dated before January 1886 could claim only the contract rates for the improvements, that the observations relied on in *Kozhikot Sriman Vikraman*

v. Madathil Ananta Patter ILR (1910) M. 61 was obiter and could not override the decision in *Randipurayil Kunhisore v. Narothis Kunhi Kunnan*

ILR (1907) M. 1 and that therefore the District Munsif was wrong in granting the review. The defendants have put in this Revision Petition to the

High Court on the ground that no appeal lay to the District Court against the Munsif's order granting the review and hence the District Judge acted

in that jurisdiction in entertaining and deciding it.

2. The question for our decision is whether this contention is correct. Order 43 Rule 1(w) of the CPC allows an appeal from an order under Order

47 Rule (4) granting an application for review. Order 47 Rule 4 comprises two clauses of which the first clause relates to the rejection of an

application for review and the second clause relates to the granting of an application for review and contains also provisos (a), (b) and (c) which

lay down the conditions for the grant of review. When Order 43 Rule 1(w) provides an appeal against an order under Order 47 Rule 4 granting an

application for review, it can only mean an order under Order 47 Rule 4(ii), because, as already stated, Clause (1) relates to the rejection of an

application for review and not to the granting of an application for review. Taking it then that an appeal lies under Order 43 Rule 1(w) only where

an order is passed granting an application for review under Order 47 Rule 4(ii), we have further to see whether there is any other provision in the

CPC allowing appeals against orders granting review. Order 47 Rule 7(1) provides for an appeal against such an order if (a) it is in contravention

of the provisions of Rule 2 (b) it is in contravention of the provisions of Rule 4 (thus repeating the provisions of Order 43 Rule 1(w), and (c) on the

ground that the application was made after the expiration of the period of limitation prescribed therefor and without sufficient cause.

3. Clauses (a) and (c) do not apply to the present case, and we are again thrown back upon Order 47 Rule 4(ii). We may add that the same view

was taken recently by a Division Bench of this Court in C.M.A. No 195 of 1910 to which one of us was a party. The remaining question for

consideration is whether in this case the District Munsif's order was in contravention of any of the three provisions of Order 47 Rule 4(ii). It is

clear that it is not. That being so no appeal lay against his order granting the application for review. The same view was taken by all the four High

Courts under the corresponding provisions contained in Section 626 of the old Civil Procedure Code. (See the case of Manundra Chandra Roy

Chowdhury v. Balaram Das (1909) 11 C.L.J. 161, in which the whole matter is dealt with exhaustively). We must therefore hold that the learned

District Judge had no jurisdiction to entertain the appeal.

4. Mr. Madhavan Nair the learned Counsel for the Respondent, urged before us that even if the District Judge had no jurisdiction to entertain the

appeal, we should not interfere in decision with his order dismissing the application for review because his order was right on the merits and the

Munsif's order granting the review was wrong on the merits. The Learned Counsel's contention was (a) that the observations in Kozhihot Sriman

Vikraman v. Madathil Ananta Patter ILR (1910) M. 61, on which the Munsif relied were obiter, (b) that Rundipurayil Kunhisore v. Narothe Kunhi

Kannan ILR (1907) M. 1 clearly decided that the tenant under a lease granted before January 1886 was bound by the terms of his contract and

could not rely upon the provisions of the Improvements Act. If the question of law was clearly beyond doubt we might be disposed to accede to

the arguments of the respondents' counsel. But the view taken in Kozhihot Sriman Vikraman v. Madathil Ananta Patter ILR (1910) M. 61 has

been followed in S.A. No. 540 of 1910 decided in November 1911.

5. In these circumstances we do not think that we should support the order of the District Judge, which was clearly passed without jurisdiction. If

the District Judge's view is right and the District Munsif's view wrong, the plaintiffs will have their remedy by an appeal against the final decree

which will be passed by the District Munsif. On the view then, that the District Judge entertained without jurisdiction the appeal from the Munsif's

order granting the review application, we set aside his order and restore that of

the District Munsif. The parties, will in the circumstances bear their own costs in the District court and in this Court.