

(1912) 12 MAD CK 0038
In the Madras High Court

Oravukundiyl Parkum Elavana Tholan and Another
Vs

APPELLANT

Palankundy Kunhi Kutty

RESPONDENT

Date of Decision : 18-12-1912

Acts Referred:

Citation : 18 Ind. Cas. 549

Hon'ble Judges : Sadasiva Aiyar, J;Ralph Benson, J

Bench : Division Bench

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 respects of cocoanut trees, areca, jack trees and pepper vines to be planted by the tenants. The Munsif, following the Full Bench case of Randupurayil Kunhisore v. Neroth Kunhi Kannan 5 M.L.T. 277 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 in Koshikot Pudiya Kovilagath Sreeman Vikraman v. Chundayil Madattul Atlanta Patter (1910) M.W.N. 402 the decision of a Division Bench of this Court which contained an observation that the Full Bench decision in Rundupurayil Kunhisore v. Neroth Kunhi Kannan 5 M.L.T. 277 did not prevent a tenant from claiming compensation for improvements according to the Act of 1883, even though the Marupar or lease was effected before January 1836. On the strength of this decision, the defendants applied to the Munsif for a review of judgment in the beginning of March 1911. The review was granted by the learned District Munsif. The plaintiff applied to the District Court against the order granting the review, the learned District Judge reversed the Munsif's 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 *Randupurayil Kunhisore v. Neroth Kunhi Kannan* 5 M.L.T. 277 clearly held that the tenant, who came under a lease dated January 1886, could claim only the contract rates for the improvements, that the observation relied on in *Koshikot Pudiya, Kovilagath Sreeman Vikraman v. Chundayil Madattul Ananta Patter* (1910) M.W.N. 402 was obiter and could not override the decision in *Randupurayil Kunhisore v. Neroth Kunhi Kannan* 5 M.L.T. 277 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 without jurisdiction in entertaining and deciding it.

2. The question for our decision is whether this contention is correct. Order XLIII, Rule 1(w) of the CPC allows an appeal from an order under Order XLII, Rule 4, granting an application for 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 a review. When Order XLIII, Rule 1(w) provides an appeal against an order under Order XLVII, Rule 4 granting an application for review, it can only mean an order under Order XLVII, Rule 4(ii), because as already stated, Clause (i) 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 XLIII, Rule 1(w) only where an order is passed granting an application for review under Order XLVII, Rule 4(ii), we have further to see whether there is any other provision in the CPC allowing appeals against orders granting review. Order XLVII, Rule 7(1) provides for an appeal against such an order, if (a) it is in contravention of the provisions of Rule 2, (b) if it is in contravention of the provisions of Rule 4, [thus repealing the provisions of Order XLIII, Rule 1(w)] and (c) on the ground that the application was made after the expiration of period of limitation prescribed therefor and without sufficient cause. Clauses (a) and (c) do not apply to the present case, and we are again thrown back upon Order XLVII, Rule 4(ii). We may add that the same view was taken recently by a Division Bench of this Court in Civil Miscellaneous Appeal No. 1905 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 to Order XLVII, 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 *Manindra Chandra Roy Chowdhury v. Balaram Das* 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.

3. 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 revision 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 *Koshikot Pudiya Kovilagath Sreeman Vikraman v. Chundayil Madattul Ananta Patter* (1910) M.W.N. 402 on which the Munsif relied, were obiter, (b) that *Randupurayil Kunhisore v. Neroth Kunhi Kantian* 5 M.L.T. 277 clearly decided that the tenant under a lease granted before January 1836 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 clear beyond doubt, we might be disposed to accede to the argument of the respondent's Counsel. But the view taken in *Koshikot Pudiya Kovilagath Sreeman Vikraman v. Chundayil Madattul Ananta Pattar* (1910) M.W.N. 402 has been followed in *Neechooli Parie Amma v. Chathanadath Kallassin Kunhikandan* (1911) 2 M.W.N. 513. 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.