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**(1914) 03 MAD CK 0056**  
**In the Madras High Court**

Pattungal Moidin Kutti Musaliar

APPELLANT

Vs

C.P. Ummayta Umma and Another

RESPONDENT

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**Date of Decision :** 09-03-1914

**Acts Referred:**

**Citation :** AIR 1914 Mad 56 : 24 Ind. Cas. 849

**Hon'ble Judges :** Tyabji, J;Spencer, J

**Bench :** Division Bench

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**Judgement**

1. The question raised in this second appeal relates to the amount of compensation that the defendant is entitled to for improvements. The defendant contended that at the time of the demise to him, the rights of the previous lessee, Asser, had vested in Kathiri Kutti under a sale held in execution of a decree which Kathiri Kutti had obtained against Asser. The plaintiffs, the lessors, reserved in the demise to the defendant only the rights of Kathiri Kutti under the mortgage obtained from Asser, and the lease was executed on the footing that Kathiri Kutti had only a mortgage right then. The defendant contended that a few days after the demise to him by the plaintiffs he purchased the rights of Kathiri Kutti, that is the rights possessed by Asser under the previous lease by the plaintiffs. The defendant claims to be entitled to receive compensation not only for trees planted by him after the demise but also for any improvements for which compensation would have been due to Kathiri Kutti. The lower Courts are wrong in holding that the defendant was entitled to have compensation only for trees planted by himself subsequent to the demise to him. The District Munsif held that the defendant should institute a fresh suit for any compensation payable to Kathiri Kutti to which, the defendant became entitled under the purchase from him. But in doing so he was clearly , wrong. Mr. Kunjunni Nair contends that the statement in the demise that certain grown-up trees belonged to the plaintiffs should not be taken to mean that no young trees belonged to them. It is unnecessary for us to consider what presumptions of fact may be drawn by a Court of fact from the fact mentioned in the demise. We request the District Judge to submit a revised finding on the third issue with reference to the

above observations. The finding should be submitted within one month from date of receipt of this order by the lower Court and seven days will be allowed for filing objections.

2. In compliance with the order contained in the above judgment the District Judge submitted the following

FINDING : I am ordered by the High Court in their order of Friday, the 5th January 1912, in Second Appeal No. 1591 of 1909, to record a finding on the 3rd issue in Original Suit No. 517 of 1907 on the file of the District Munsif of Telli-cherry which formed the subject of Appeal Suit No. 272 of 1908 on this Court's file. For the respondents it is urged that there is nothing to show what were the improvements effected by Asser and there is no evidence to show when he came into possession. He held under a Marupat of 1071 and at any rate he was in possession at that time.

3. I think that the appellant's Counsel rightly relies on Exhibit III as showing what the improvements were. I find that they are those given in the resume of the Commissioner's report as follows :

.Rs.

a.

P.

Value of fruit-bearing trees

115

5

10

Value of trees not bearing

12

9

6

Value of trees of spontaneous growth ...

5

10

8

Value of building

126

14

2

Cost of maintaining jenmi's trees

6

0

0

Total

266

8

22

4. It is objected that the defendant should not be given the full value of the building which forms part of the improvements, but only Rs. 25. That point is taken in the plaint paragraph 3(ii), and also in the 5th objection to the finding. The learned Pleader who appeared for the appellant in support of the finding, is unable to refer to any passage in the written statement denying the allegation in paragraph 3 (ii) of the plaint, and has not relied upon the Compensation for Tenants' Improvements Act (I of 1900), Section 19. The learned Pleader argued, however, that the judgment of the High Court asking for a finding has dealt with the point, and has decided that the defendant is to be paid the full value of the building. We think that the judgment referred to did not deal with this point, but that all that was contemplated in it had reference to the trees on the land. We will, therefore, order that the defendant should be at liberty to remove the building within three months of this date, if he chooses : and if he does not do so, then the improvements should be valued as on the finding with this modification that only Rs. 25 will be allowed for the building so that in all Rs. 115-5-10, Rs. 12-9-6, Rs. 5-10-8, Rs. 25, Rs. 6, total Rs. 164-10 will be allowed for improvements and the decree will be modified accordingly. If the building is removed by the defendant, the value of the improvements as given above will be lessened by Rs. 25. The time for payment will be extended to three months from this day. If the plaintiffs have already taken possession of the property they will pay interest at 6 per cent. per annum on the amount due to the defendant for improvements from the time when they took possession. The appellant will have his proportionate costs in this Court and in the lower Courts. The respondents will bear their own costs.