

(1919) 03 MAD CK 0012
In the Madras High Court

Puthiapurayil Kannyan Baduvan and Another	APPELLANT
Vs	
Chennyanteakath Puthiapurayil Alikutti and Others	RESPONDENT

Date of Decision : 26-03-1919

Acts Referred:

Conveyancing Act, 1881 — Section 12

Citation : (1919) ILR (Mad) 603 : 51 Ind. Cas. 286 : (1919) 10 LW 95 : (1919) 37 MLJ 47

Hon'ble Judges : Wallis, C.J;Seshagiri Aiyar, J;Sadasiva Aiyar, J;Oldfield, J;Coutts Trotter, J

Bench : Full Bench

Judgement

Wallis, C.J.—The Malabar compensation for Tenants' Improvements Act, 1899, entitles a tenant who is sued in ejectment to compensation

for improvements to the land from which it is sought to eject him, and authorizes him, notwithstanding the determination of the tenancy, to remain in

possession until ejectment in execution of a decree or of an order of Court varying that decree as provided in Section 6(3). Section 6(1) provides

that the decree is to direct that on payment by the plaintiff into Court of the amount found due for improvements the defendant is "" to put the

plaintiff into possession of the land with the improvements thereon."" As u/s 5(2) the tenant after decree is to continue in possession as a tenant,

Section 6(3) provides for a re-valuation of the improvements when the plaintiff seeks to execute the decree with reference to the state of things

then existing, and for an order of Court varying the decree accordingly. The only improvements for which compensation is payable under these

sections are improvements to the land from which it is sought to eject the tenant, and they neither impose nor recognize any obligation on the

plaintiff to pay for improvements to land from which the plaintiff does not seek and is not entitled to eject the tenant. We have therefore to consider

the question referred to us apart from the provisions of the Act. A lessor cannot give a tenant notice to quit a part of the holding only and then sue

to eject him from such part only, as pointed out quite recently by the Privy Council in Harihar Banerji v. Ramasashi Ray (1918) 35 M.L.J. 707.

Consequently if the suit is brought by the original lessor the answer to the question referred to us must be in the negative because such a suit does

not lie at all. Other considerations, however, arise, where, as in the present case, the original lessor has parted in whole or in part with the reversion

in part of the demised premises. Under the general law such an assignment effects a severance, and entitles the assignee on the expiry of the term

to eject the tenant from the land covered by the assignment. There never was any question about this, but it was held in England that, while the

assignee of the reversion in part was entitled to the benefit of the covenants in the lease as regards such part, the result of the severance effected by

the assignment was to destroy altogether the conditions in the lease as for re-entry for non-payment of rent. Coke on Littleton 2.15a. The Law was

altered as regards the case last mentioned by 22 and 23 Vict. C. 35 Section 3, and generally, as regards leases made after the passing of the Act,

by Section 12 of the Conveyancing Act, 1881. See Piggot v. Middlesex County Council (1909) 1 Ch. 134. Section 109 of the Transfer of

Property Act gets over the difficulty by providing that "" the transferee shall possess all the rights of the transferor in the part transferred"" words

which are large enough to cover both covenants and conditions. There is no question of a condition here, as the suit was to recover possession on

the expiry of the term. Under the general law the assignee of the reversion in part of the demised premises is entitled to bring such a suit, and there

does not appear to be any ground for suggesting that the general law in this respect is inapplicable in Malabar. The learned judges in their Order, of

Reference have referred to the provision in Section 6(2) that ""the money due by the plaintiff to the defendant for rent or otherwise in respect of the

tenancy"" is to be set off against the amount found due for improvements. The only rent due to a plaintiff suing as assignee of the reversion in part of

the demised premises would be the apportioned rent in respect of the part assigned to him. There would be therefore no difficulty in applying the

provision in question to such a case. Moreover, it is a provision in favour of the landlord, and cannot be regarded as enlarging the tenant's rights.

The view I have taken is in accordance as to the construction of the Act with the decision of Sadasiva Aiyar and Moore, JJ., in Second Appeal

No. 2180 of 1914, and as to the question of severance with the decision of Sundara Aiyar and Sadasiva Aiyar, JJ., in Appeal Against Order No.

85 of 1911, an earlier stage of the same case. It was not suggested that there was any hardship to the tenant in that case or in this. If however it be

apprehended that jenmis may be so unwise as to attempt to use the power of severance in a manner oppressive to their tenants, the proper course,

it seems to me, is to move for an amendment of the Act.

2. I would answer that the lessor is not entitled to eject from a part only of the holding, but that the assignee of the reversion in part of the demised

premises is entitled to eject for due cause from such part on payment of the value of the improvements to that part, and that this answer applies to

tenancies in Malabar.

Oldfield, J.

3. I agree with the answer just proposed to the reference and accept the reasoning, by which it is supported, unreservedly, so far as it relates to the

effect of severance on a tenancy. I agree also that its effect is undiminished, when as in the case before us, the tenant is holding over and there has

been no acceptance of rent, involving that the lease has been renewed.

4. I have however felt some hesitation regarding the application of Act I of 1900 as between the tenant and the transferee of a part of the leased

property, because it has been argued that the Act is worded with reference to improvements to the holding, and compensation is payable only for

improvements on the holding, that is the whole property covered by the original lease, not for those standing on or affecting the transferred portion.

And no doubt in Section 3(3) an improvement is defined with reference to the value of the holding and the purpose, for which it is let; and in

Sections 4, 7 and 9(i) improvements, which increase the value of the holding are referred to directly. But there are also provisions, in which the

reference is not to the holding, but to the tenancy, such reference being direct in Section 6(2) and (3) and indirect in Section 6(1) where the

reference to "the land" may be read as to the land referred to in the definition

of "tenant" in Section 3(1). The question is then whether the use of the term "holding" was intended by the Legislature to be distinctive and to mean the property originally leased, not the portion of it, from which in consequence of a subsequent transfer the tenant would be separately ejected. The result of so regarding it will be the exclusion of claims to compensation after severance from the purview of the Act, and we have been shown no reason for thinking that this was contemplated. The Act contains no definition of the term "holding"; and in the circumstances I am of opinion that a liberal interpretation of it is legitimate and I therefore concur in the conclusion reached by the learned Chief Justice.

Sadasiva Aiyar, J.

5. I agree with the judgment of my Lord and have nothing to add.

Coutts Trotter, J.

6. I agree with my Lord. The Legislature might have created a substantive right in the tenant to compensation for his improvements enforced by a lien on his holding in its entirety. What in fact it has done is to make the right to compensation merely an adjunct to a suit in ejectment or for redemption. So far as I can see, the right itself does not even arise till such a suit is brought. That being so, the right must, it appears to me, be limited to the land which is the subject-matter of the suit, i.e., the lands from which it is actually sought to eject the tenant.

Seshagiri Aiyar, J.

7. The scope of the reference was considerably limited during the second argument before a Fuller Bench. The objection which I had raised to the suggestion that there can be no eviction from part of the premises during the continuance of the tenancy was not attempted to be answered by Mr.

Eroman Unni, on the second occasion. I feel no hesitation in saying that neither u/s 109 of the Transfer of Property Act, nor under the general Law of the land is it competent to an assignee of a part of the demised premises to eject the tenant from that portion compulsorily during the period of the tenancy. Even if Section 109 is capable of a different construction, I would hold that its operation should not be extended to agricultural tenancies in this country, because the rule of equity, justice and good conscience would be defeated rather than advanced by the extension of the

doctrine of partial eviction to agricultural leases. As to the rule of English Law, I had formed an opinion at the first hearing that partial eviction

before the expiry of the term of the tenancy is equally unavailing in England and I see no reason to change that view. But I do not think it necessary

to discuss the point now. Therefore my answer to the question would be in the negative, if it is understood to refer to eviction before the expiry of

the period of the lease.

8. But what we have to consider is a case of a terminated tenancy which by virtue of the Malabar Compensation for Improvements Act has not

wholly ceased to be operative. There can be no doubt that the act does not attempt to legislate whether there can be partial eviction or not. The

Legislature has only provided for events happening on the filing of a suit for ejectment. At the same time, to my mind it seems clear, that it did not

contemplate the possibility of a partial eviction. It, by the terms of Sections 5, 6, 7 and 9, seems to have assumed that the lease under which the

tenant came in would continue intact. In Clause (1), the expression used is "" notwithstanding the determination of the tenancy."" This must have

reference to the one which was created on the first entry and not to the split up parts by the process of sale or assignment. Strictly speaking unless

the tenant attorns or otherwise acknowledges the fractional landlord, there would be no tenancy to determine. Again in Section 6 Clause (1) the

word ""tenant"" is used; in Clauses (2) and (3) the word ""tenancy."" These words are not appropriate to the relationship which comes into existence

by reason of the division of the demised premises, either by conveyance or assignment. In Sections 7 and 9, as if by way of variety, the language

employed is. ""holding."" Where can we have a ""holding"" between the assignee of one of the demised premises and the quondam tenant of all the

premises, unless a new tenancy is created in respect of it ? If such a one is by act of parties brought into existence, the present question is easily

answered. Otherwise I find it difficult to hold that on the expiry of the term of the lease, there is any "" holding "" belonging to the assignee of a

portion or ""a tenant"" in respect of it. It seems to me that the Legislature in providing for compensation on eviction understood that the parties were

in status quo ante and that there has been no break up of the lease interest.

9. It is no answer to this difficulty to say that under the ordinary law, a tenant

that was, can be evicted from each and every portion of the leased property. If that can be done, except in cases of holding over, it would be by regarding him as a trespasser who had no right to remain on the soil after the efflux of time limited by his lease, I am prepared to concede that the Act we are construing, does not in terms prohibit partial eviction. But that is only the negative side of the enactment. Has it not by implication asked the Courts to pass a decree in ejectment preparatory to the award of compensation on the basis of an existing tenancy ? That is my reading of the Act, and I therefore regret I am unable to agree with the conclusion to which the learned Chief Justice and my learned brothers have come.

10. I have been reading a great deal about the genesis of the Act. The report of the Malabar Land Tenures Committee shows that the present law is a compromise between the creation of occupancy rights in the soil in favour of all tenants in the same way that the Estates Land Act has done and the endeavour to purchase the landlord out altogether. I do not propose to quote any extracts from the Report; but I cannot help remarking that, it is a sad commentary on their labours that the Law which they recommended should have been so inaptly worded as to enable the landlord to evict the tenant piece-meal. The danger which threatens the tenant is not an imaginary one. I suggested some cases in the course of the hearing.

A tenant erecting a house in a portion of the paramba or digging a tank in one of the demised premises to irrigate the lands demised are instances in which partial eviction would place the tenant very badly at the mercy of the landlord. When we remember the practice of granting Melcharths which prevails in Malabar, it would occur at once that a karnavan can by threatening to evict the tenant from a portion of the holding exact unconscionable terms prior to renewal. In the case of ordinary owners of property such a procedure would not be frequently adopted. But the Malabar jenmi of to day is in a transition stage. Education and notions of independence have destroyed his benevolent despotism. He is a watched man and he therefore does not hesitate to make the most of his opportunities. Melcharths and the demand of a heavy renewal fee for which he is seldom held accountable to the flock under him are his resorts to enrich his wife and children. There may be still a few old fashioned jenmis who wish well by the tarwad and its property, but their numbers are diminishing. The

tie of natural kinship rebels against the enforceable claims of the corporate body; and the result is that, in the majority of cases, the Karnavan is trying to exact as much as possible from the tenants. Our decision would place a new weapon in his hands and the lot of the tenant would become more difficult than ever.

11. I hope I may be excused this incursion into the domain of social tie between the tarwad and its members because I am anxious to catch the eye of the Legislature as to the necessity of so amending the law as to make the lot of the Malabar tenant more tolerable than it would be under our decision. I feel compelled to differ from the majority of the Court and to hold that until the payment of compensation in respect of the holding as a whole, there can be no partial eviction.