

(1937) 10 MAD CK 0042
In the Madras High Court

S. Badsha Sahib and Co.

APPELLANT

Vs

Thaliyil Vettath Lakshmi Kutty Kovilamma and Others

RESPONDENT

Date of Decision : 06-10-1937

Acts Referred:

Citation : (1938) ILR (Mad) 763 : (1937) 2 MLJ 814

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—There was a mortgage granted on the 1st July, 1923, by the first defendant and his deceased brother in favour of plaintiffs 1 to 3 and another, which comprised 27 items. The transaction, we understand, was one of simple mortgage in respect of 23 out of them and in regard to the remaining four items, what was created was a usufructuary mortgage, which was to subsist for nine years. On the same date, the aforesaid four items were taken back by the mortgagors on lease for a period of five years. This suit has been brought to recover the items comprised in the lease with arrears of rent. The appellant before us is the 36th defendant, claiming under an alleged lease from the mortgagors, who complains that the lower Court has wrongly disallowed his claim to improvements.

2. Turning first to the pleadings, it is noticeable that in the written statement filed by the appellant, no such claim was made. There it is stated that he lent large sums to the mortgagors, who further caused him to expend monies for improving or altering the property, that it was found upon a settlement with them that Rs. 3,000 was due to him and that provision was made for its repayment in the rental agreement executed by the first defendant in his favour on the 16th May, 1931. Then he goes on to describe how by means of some kind of adjustment spread over six years, the period of the lease, the full amount was to be paid back to him. It is impossible to read" into this written statement a claim to improvements.

3. Then at the trial, no serious attempt seems to have been made to adduce

evidence on the question of improvements. Indeed, it has not even been proved that the thirty-sixth defendant was a lessee for six years or that he was in possession even previous to the date of the mortgage as suggested. Neither the original lease deed nor the rental agreement of 1931 was produced or filed. Apart from these matters there is an objection, which in our opinion is fatal to his claim. In the written statement it is alleged (there is no reason why he should not be held bound by his own admission) that the lease was in respect of a shop and not, as now suggested, a shop and a paramba.

4. On the footing then that what was leased to the thirty-sixth defendant was a shop pure and simple, the question arises whether he can claim the benefit conferred upon tenants by Act I of 1900 (the Malabar Compensation for Tenants Improvements Act). The word "tenant" is defined as including a person, who as lessee, etc., "of land, is in possession thereof". Here is a clear indication that the legislature did not intend that buildings or houses or shops should come within the purview of the Act, and the argument is fanciful that because a building must necessarily stand upon land, therefore it comes within the scope of the Act. The expression in the Act must receive its natural meaning and we are not prepared to hold that the benefit conferred by it extends to tenants of buildings. In *Erechamveetil Parkum Koottayi Chathukutty Vs. Changanatha Parkum Thottathil Kunhappu and Another*, there is a judgment of Jackson, J., where this view has been taken, and with that we respectfully agree. It was held that whereas the Act applies to agricultural holdings and kudiyruppus (vacant sites available for buildings), it does not apply to houses or shops. In subsequent decisions, this case has been referred to but never dissented from. In *Pathumma Umma and Others Vs. Aliyammakkanakath Mohideen (dead) and Others*, the facts are these. What was "entrusted" to the defendants was a hut, but the new house which they built, covered a considerably larger area than the site of the hut. Reilly, J., held that even if the defendants were tenants of the hut, they were not tenants of the area outside the site of the hut, and from this, it followed" that the new house did not constitute a tenant's improvement. But Srinivasa Iyengar, J., bases his decision expressly on the ground, following the case just cited, that the lease was of a building. The suggestion that Reilly, J., in this case casts a doubt on the correctness of *Erechamveetil Parkum Koottayi Chathukutty Vs. Changanatha Parkum Thottathil Kunhappu and Another*, is not well-founded. Nor has it been called in question in either of the two later decisions *Paredath Chori George v. Thithi Umma* (1930) 60 M.L.J. 214 or *Kali Matathil Veeran Kutty's son Avaru Vs. Asi Bai and Others*, to which our attention has been called, although in the former case there are observations to the effect that it was unnecessary to express any opinion on the question whether the Act applies to leases of buildings or shops. Now turning to the actual decisions in these two cases *Paredath Chori George v. Thithi Umma* (1930) 60 M.L.J. 214 "what was let was a compound or paramba or kudiyruppa" (see page 216) and it was held that the lessee was entitled to compensation in respect of the house which he constructed on the vacant site; in *Kali Matathil Veeran Kutty's son Avaru Vs. Asi Bai and*

Others, " the appellant obtained the property, which was a vacant site, on lease for erecting a house for residential purposes" (page 152) and he was held entitled to the value of the house which he built. The present case differs from them and resembles Erechamveettil Parkum Koottayi Chathukutty Vs. Changanatha Parkum Thottathil Kunhappu and Another, where as here the lease was of a building--which case, we may note, has been followed without discussion, by a Bench of this Court (Wallace and Thiruvengkatachariar, JJ.) in L.P. As. Nos. 17 to 22 of 1925: This lends support to our view of the section.

5. In the result, the appeal fails and is dismissed with costs.