
(1937) 10 MAD CK 0003
In the Madras High Court

S.H. Badsha Sahib and Co.

APPELLANT

Vs

Thaliyil Vettath Lakshmi Kutti Kovilamma and Others

RESPONDENT

Date of Decision : 06-10-1937

Acts Referred:

Citation : AIR 1938 Mad 171 : 174 Ind. Cas. 325 : (1937) 46 LW 846

Hon'ble Judges : Venkatasubba Rao, J; Horwill, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—There was a mortgage granted on July 1, 1923, by defendant No. 1 and his deceased brother in favour of plaintiffs

Nos. 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 defendant No. 36 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 moneys 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 re-payment in the rental agreement executed by defendant

No. 1 in his favour on May 16, 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. 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

defendant No.36 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.

3. On the footing then that what was leased to defendant No. 36 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 *Kottayi Chathukutty Vs. Changanatha Parkum Thottathil Kunhappan 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. Hut Srinivasa Aiyangar, J. bases his decision express 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 en the correctness in Kottayi

Chathukutty Vs. Changanatha Parkum Thottathil Kunhappan and Another, , is not well-founded. Nor has it been called in question in either of the

two later decisions. P.C. George v. T. Umma 60 M.L.J. 214 : 131 Ind. Cas. 641 : AIR 1931 Mad. 363 : 33 L.W. 407 : (1931) M.W.N. 294 :

Ind. Rul. (1930) Mad. 545, or 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 lease of buildings or shops.

Now turning to the actual decisions in these two cases, in P.C. George T. Umma 60 M.L.J. 214 : 131 Ind. Cas. 641 : AIR 1931 Mad. 363 : 33

L.W. 407 : (1931) M.W.N. 294 : Ind. Rul. (1930) Mad. 545, ""what was let was a compound or paramba or kudiyruppu"" (see p. 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 Avaru Vs. Asi Bai and

Others, .

the appellant obtained the property, which was a vacant site, on lease for erecting a house for residential purpoees, p. 152 Page of 55 Miž½[Ed.].

4. and he was held entitled to the value of the house which he built. The present case differs from them and resembles Kottayi Chathukutty Vs.

Changanatha Parkum Thottathil Kunhappan 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, J.J.) in L.P. As. Nos. 17 to 22 of 1925. This lends

support to our view of the section. In the result the appeal fails and is dismissed with costs.