

(1897) 09 MAD CK 0028
In the Madras High Court

Uthunganakath Avuthala

APPELLANT

Vs

Thazhatharayil Kunhali and Others

RESPONDENT

Date of Decision : 07-09-1897

Acts Referred:

Malabar Compensation for Tenants Improvements Act, 1887 — Section 7

Citation : (1897) ILR (Mad) 435 : (1897) 7 MLJ 293

Hon'ble Judges : Subrahmania Aiyar, J; Davies, J

Bench : Full Bench

Judgement

Subrahmania Aiyar, J.—Though, the amount involved in this case is small, the questions, raised are not unimportant; The facts of the case are briefly as follows:

The land for the possession of which the plaintiff (appellant) sued in this case, had, many years ago, been originally demised by the assignor of the plaintiff to the first defendant's father. After the father's death; the first defendant succeeded to the possession of the land : but in 1890 he executed to the landlord Exhibit A. By that instrument it was provided that the first defendant was to hold the land for one year and to surrender it at the end of the term. The instrument further stated that the landlord having agreed to the first defendant holding the land for the year at a rent which was less (by six paras of paddy worth about Rs. 3) than what was payable under the instrument of demise executed when the land was originally let to the first defendant's father the defendant agreed not to claim compensation for certain improvements made by way of reclamation after Madras Act I of 1887 came into force. The value of these improvements amounting to Rs. 60-14-0 was directed by the lower Courts to be paid by the plaintiff, notwithstanding the provision in Exhibit A respecting such compensation.

2. The first question for decision is whether the last mentioned provision in Exhibit A is invalid u/s 7 of the enactment referred to. That section runs as follows :--" Nothing in any contract between a landlord and a tenant made after the 1st day of January 1886 shall take away or limit the right of a tenant to

make improvements and claim compensation for them in accordance with the provisions of this Act."

3. The argument on behalf of the appellant in support of the contention that the lower Courts were wrong in awarding the compensation in question was this. The words "to make improvements and to claim compensation for them" refer only to improvements to be made in the future and to compensation which might, become due in respect thereof. A contract, however, relating to compensation for improvements already effected does not fall within the section and the clause in question in Exhibit A, which refers to such past improvements, is therefore valid. This contention is, no doubt, plausible, but in my opinion, it is not sound.

4. The necessity for the Legislature taking the extreme step of depriving Malabar tenants of their power to enter into contract with their landlords in regard to improvements arose from well known local causes. A great deal of the land in Malabar, cultivated or waste, belongs to comparatively a very few Jenmies. The rest of the people, who are mostly agriculturists, have, to earn their livelihood, to obtain what land they want from these "Jenmies. So long as there was not much demand for lands the condition of tenants was not very bad. But with the keen competition for the possession of land which has been for a considerable time prevailing, the state of things altered. Evictions attended with serious crime became not unusual; the compensation awardable for improvements made by tenants being generally far below the real value of the improvements. Such a state of things required to be checked and the condition of tenants called for amelioration. Act I of 1887 was the first instalment of legislation intended to bring about a salutary change. In these circumstances it is difficult to believe that the Legislature meant to prohibit only contracts relating to improvements to be effected after such contracts. No doubt, the majority of tenants in Malabar, who are ignorant men, may perhaps not be as quite able to realize the value of the right to compensation for improvements to be made as they would be to realize the value of the right to compensation for improvements already made. Very likely also the desire of tenants to secure land for cultivation may, at the time of the creation of tenancies, induce them too readily to disclaim compensation for future improvements. But on the other hand, it must not be forgotten that the desire to retain land once taken and improved is with these tenants not unnaturally far stronger than even the desire to obtain land for the first time. Consequently, the probability of tenants being improperly induced to enter into improvident contracts with reference to compensation for improvements already made is certainly less strong than the likelihood of their entering into such contracts with reference to future improvements. Looking, therefore, to the reason of the section in question, there can be little doubt that the Legislature intended to prohibit contracts relating not only to future but to past improvements also. This view is confirmed by the provisions of Section 4 of the Act. The effect of the section is that a tenant shall not, at the time of the eviction, be prejudiced by any custom which will deprive him of his right to compensation for whatever improvements made during the tenancy, whether by

himself or by his predecessors in interest. While thus the Legislature, true to its object, has excluded the operation of custom with regard to improvements "made since the creation of the tenancy till the time of the eviction, would it be reasonable to hold that a tenant may, by a contract, prejudice himself in the matter of the improvements made in the course of the tenancy but prior to the contract? To so limit the scope of Section 7 would be anomalous and would defeat the clear object of the Legislature. The provision in Exhibit A on which the plaintiff relies must, therefore, be held to be invalid and in no way to affect the right to compensation for the improvements in dispute.

5. The second question for decision is whether in determining the amount of compensation to be awarded, the circumstance that the rent payable under Exhibit A was less than that payable under the prior instrument of demise, should be taken into consideration as falling under clause c. of Section 6 of the Act.

6. As to this, the contention on behalf of the plaintiff was two-fold. One was that the first part of the clause applied to the case and that within the meaning of that part was, according to the facts here, "a reduction of rent" given by the landlord to the tenant for which due allowance should be made in favour of the landlord. In order to see what force there is in this contention it is necessary to bear in mind the precise position in which the parties to Exhibit A stood with reference to each other, when the document was executed. Now before its execution, the tenancy, that commenced in the 1st defendant's father's lifetime and was continued by the first defendant, seems to have been one from year to year. But in 1890 that tenancy was determined by the mutual consent of the landlord and the tenant and the accounts relating to the rent payable in respect, of that tenancy were settled and the balance due was paid up. Then came into existence Exhibit A, whose terms, even if they had been the same as those of the prior demise, would clearly mark the creation of a fresh tenancy. Not the less so certainly while the terms, as has already been seen, are different; since the tenancy under Exhibit A was for a year certain, although the tenant, as a matter of fact, held over. Can it be said under these circumstances that there was a "reduction of rent"? Now these words imply a lessening of a liability created by the contract under which the property improved was demised. No doubt in letting the land again at the smaller amount, which was reserved as rent in Exhibit A, the landlord shewed a favour to the tenant. But the favour was one which did not relieve the tenant to any extent from the payment of anything due under the demise with reference to which the improvements were made. It follows that the facts relied on did not amount to a "reduction of rent" as contended for the plaintiff.

7. The second contention was that though there might not have been a "reduction of rent," yet there was an "advantage" given by the landlord to the tenant within the meaning of the latter part of the clause. Now the word "advantage" in that part is qualified by the term "other" and in a context such as

that under consideration, on the principle of ejusdem generis, "other" means "other such like." But, from what has just been said with reference to the reduction of rent, it will be seen that the advantage given to the first defendant in allowing him to hold under Exhibit A at the smaller amount of rent mentioned therein, was one which did not relieve the defendant partially or wholly from any subsisting liability. Such advantage cannot, therefore, be held to be similar to a "reduction or remission of rent," the particular kinds of advantage the enumeration of which precedes the general words "other advantage" in the clause and which, of course, as already stated imply a discharge partial or complete from an existing obligation. The latter part of the clause also is, therefore, inapplicable.

8. Lastly, as to the costs awarded to the respondents on account of the fee paid to the Commissioner, who was deputed to ascertain the value of the improvements, I do not think that there is sufficient ground "for interfering with the discretion exercised by the lower Courts. See *Narayana v. Narayana* I.L.R., 8 M., 289.

9. I would, therefore, dismiss the second appeal with costs.

Davies, J.

10. The first question raised by the plaintiff (appellant) is whether the 1st defendant was bound by his agreement in A not to demand compensation for his improvements. With reference to Section 7 of the Malabar compensation for Tenants' Improvements Act, 1887, it was argued that that section, applies to improvements to be made after the date of the contract; but I think it is clearly intended to refer to any improvements made after the first day of January 1886, whether the contract be made prior to or subsequent to the making of such improvements. The contract in this case was made in 1890, but it related to improvements admittedly made after the 1st day of January 1886. I, therefore, hold that it was void u/s 7 of the Act and was therefore not binding on the 1st defendant and, therefore, not upon those who claim through him.

11. The second question raised is whether the plaintiff is not entitled to deduct from the compensation payable the value of a certain reduction made in the rent in consideration of the said improvements. The amount of the reduction was 6 paras of paddy per annum, and this reduced rate of rent was enjoyed for 5 years; so that 30 paras of paddy is the amount claimed in reduction by the plaintiff under clause c. of Section 6 of the Act. I think the plaintiff is clearly entitled to make this deduction from the value, of the improvements payable by him. It was urged that the reduction of rent; in order to be a good set off against the value of improvements, should have been made in an existing rental, and not upon a new rental agreement such as A, is. But I find that Exhibit A was only a renewal of an old lease held by the 1st defendant's father from the year 1889, and it may, therefore, be taken to be a continuation of the old lease and not a new lease. Even, however, if it was otherwise and the 1st defendant had been a

stranger and a new comer, he did as a fact get a reduction of rent upon the former lease amount in consideration of the improvements which he had acquired from the last tenant in whose.....shoes he stood in regard to them, and, therefore, it seems to me quite immaterial whether it was upon the old lease or the new one that the reduction is claimable, the fact being that in consideration of such improvements as existed on the land, the value of which the landlord has now to pay the tenant, the latter did get a reduction of rent.

12. The only other point is whether the plaintiff was chargeable with the whole of the costs of the commission, viz., Rs. 15, the Commissioner's fee. I think that as the defendants made a claim for more than double what the Commissioner has found to be due to them, the fee for the Commissioner should have been divided equally between the plaintiff and the defendants as one side has gained as much as the other.

13. The result is that there should be deducted from the amount payable for improvements by the plaintiff the value of 30 paras of paddy, namely, Rs. 15, the amount by which the rent was reduced and that the amount of the Commissioner's fee payable by the plaintiff to the defendants is reduced from Rs. 15 to Rs. 7 1/2. With these modifications, I would dismiss the second appeal with proportionate costs.

14. u/s 575 of the Code of Civil Procedure, the judgment of Mr. Justice Subrahmania Aiyar prevails and the second appeal is dismissed with costs.