
(1945) 08 MAD CK 0004
In the Madras High Court

Valia Anjuthathi Thamburatti

APPELLANT

Vs

Kalathingal Umachakutty Umma and Others

RESPONDENT

Date of Decision : 09-08-1945

Acts Referred:

Malabar Compensation for Tenants Improvements Act, 1899 — Section 5

Citation : AIR 1946 Mad 63 : (1945) 58 LW 559 : (1945) 2 MLJ 381

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The suit out of which this second appeal arises was one in ejectment and for rent. The lessees were defendants 1 and 2 but they

sub-leased the land to other defendants, who cut down trees and so entitled the landlord, according to the terms of the lease, to demand certain

sums for those trees. So the claim became one for rent and for the value of the trees cut. Against that claim, the tenants, u/s 5 of the Malabar

Compensation for Tenants' Improvements Act, are entitled to improvements. Section 6 permits of a set off being made, the landlord, upon

eviction, receiving the difference between the rent and the improvements.

2. The trial Court found that a number of trees had been cut; and the Commissioner valued those trees. It permitted the plaintiff to set off the total

damages against the total improvements; but the lower appellate Court held that the persons who committed the damage were solely responsible

for the acts committed by them, and so, while it permitted the plaintiff to set off against the improvements to be given to those particular sub-

tenants the value of the damages committed by them, it refused to give the plaintiff a decree against his tenants, defendants 1 and 2, for the

damages committed by sub-tenants. It is against this modification of the decree that the arguments in appeal have been directed.

3. The second defendant has filed a Memorandum of Cross-objections in which he contends that the plaintiff was not entitled to bring a suit at all;

because he had granted a melcharth to the 24th defendant, who alone was entitled to bring a suit. The 2nd defendant has also questioned the scale on which damages were awarded.

4. Although the Malabar Compensation for Tenants' Improvements Act makes provision for payments for improvements to be made direct to the

sub-tenants, the Act does not purport to displace the ordinary relations between landlord and tenant. If, therefore, sub-tenants commit any act of

waste, the tenant is liable to the landlord for the acts done by his sub-tenants in the absence of any contract between the landlord and the sub-

tenants. The Act does, however, permit the landlord to set off against the compensation payable to a sub-tenant any sum that may be due by way

of rent and damages on the land held by that sub-tenant. This right to set off seems to carry with it a corresponding obligation to set off against the

value of improvements due to a sub-tenant the amount of damages committed by that sub-tenant. Only if the value of the improvements is

insufficient to compensate the landlord for damages done, would the landlord be able to have recourse against his tenant for the damages

committed by his sub-tenant.

5. It is argued by the learned advocate for the respondent that the Court can and should grant relief against harsh terms in the lease deed whereby

excessive amounts are claimed by a landlord for trees cut by tenants. I do not however find that in the lower appellate Court the respondent

contended that the rate of damages awarded for the trees cut was excessive. He denied that any damage was caused, and contended that if

damage had been done, it should be paid for by the subtenants concerned. He did not say that the rates fixed, in his lease deed were excessive and

should be relieved against by the Court.

6. The second appeal is allowed to the extent indicated above, i.e., the landlord will, as far as possible, set off the value of the damage committed

by each subtenant against the compensation for improvements due to that particular subtenant. Only in the event of his being unable to recover

from the value of the improvements the amount of the damages committed by that sub-tenant, will the landlord be entitled to proceed against the tenant; and then only for the difference between the values of the damage committed and of the improvements made by that sub-tenant. The tenant will of course, in his turn, be entitled to recover in execution any sum paid by him to the plaintiff on account of the damage committed by that sub-tenant.

7. When a melcharth is granted, the melcharthdar is authorised by the deed to take action against the tenants and to obtain possession of the land

upon redemption. It is argued that since that is so, the jenmi loses his right to bring a suit in ejectment and for redemption of kudikanam. A

melcharth"" is defined in the Malabar Tenancy Act as "" the transfer by the landlord of part of his interest in any land held by his tenant by which the

transferee is entitled to evict such tenant."" This definition does not suggest that by the granting of a melcharth, the landlord has no right to protect his

interests; and it would be strange if the granting of a melcharth had this effect. In Polparkara Manakkal Viroopakshan Nambudripad Vs. Pulipra

Tarwad Karnavan and Manager Chembu Nayar (deceased) and Others, a case decided by a Full Bench of this Court, it was assumed that a jenmi

did not ordinarily lose his right to proceed against his tenant by the granting of a melcharth, the learned Judges having there to consider whether on

account of some special circumstance there existing, the landlord had lost the rights he would otherwise have retained. A somewhat similar

question to that discussed here arose in Mammu v. Seyina (1940) 51 L.W. 569 in which the learned Judge was not prepared to accept the

contention that the landlord had lost all rights to protect his interest by the granting of a melcharth. In that case, the melcharthdar had brought a suit

and obtained a decree, but had failed to execute it. That case is sought to be distinguished on the ground that in this case the melcharthdar had

done his duty with regard to certain lands which were the subject of the melcharth and that the melcharth was therefore acted upon. The melcharth

was however acted upon in the case considered by Stodart, J., in Mammu v. Seyina (1940) 51 L.W. 569; for the melcharthdar had actually

brought a suit and obtained a decree. I see no reason to think that by the execution of a melcharth the plaintiff lost his right to protect his interest.

Before filing his present suit, he wrote to the melcharthdar, who said that as he had been unable to evict the tenants he was willing for the plaintiff to

bring the present suit. The melcharthdar was impleaded as the 24th defendant. In the appeal both parties will bear their own costs. The

Memorandum of Cross-objections is dismissed with costs.