APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1890.
Aug. 11, 12.

MALIKAN (PLAINTIFF), APPELLANT,

v.

SHANKUNNI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Malabar Compensation for Tenants' Improvements Act—Act I of 1887 (*Madras*), *ss* 7—*General Clauses Act*, *s.* 6.

A suit to recover property in Malabar demised on kanom was pending when the Malabar Compensation for Tenants' Improvements Act came into force:

Held, on the construction of ss. 1, 5, and 7, that the tenant's right to compensation should be dealt with in accordance with the provisions of that Act.

SECOND APPEAL against the decree of E. K. Krishna Menon, Subordinate Judge of South Malabar, in appeal suit No. 280 of 1888, modifying the decree of N. Sarvothama Row, District Munsif of Calicut.

This was a suit filed before the Malabar Compensation for Tenants' Improvements Act came into force to recover a paramba, which had been demised to the defendants on kanom; the plaintiff offered to pay a certain sum in respect of the improvements effected on the property by the defendants and the amount of the compensation was the substantial question in the suit.

The District Munsif passed a decree for the plaintiff, fixing the sum payable in respect of the improvements Rs. 706-3-8; on appeal, the Subordinate Judge modified the decree by reducing the sum payable to Rs. 561-5-8.

The plaintiff preferred this second appeal.

Sundara Ayyar for appellant.

Sankaran Nayar for respondents.

JUDGMENT.—The first contention in support of this appeal is that due effect has not been given to exhibit H. That document shows that the sub-kanomdar paid the kanomdar in 1871 compensation for 201 cocoanut trees, but the jenmi was no party to the instrument, and the Subordinate Judge relied on the report made by two commissioners regarding the age of the trees. The

* Second Appeal No. 897 of 1889.

jenmi paid costs for improvements in 1851, and the finding that compensation is now payable for trees, which are planted or came to bear fruit afterwards, is open to no legal objection.

The next contention is that the present suit was pending when Madras Act I of 1887 came into force and that the Sub-Judge was in error in assessing the compensation under the Act. Our attention is also drawn to section 6 of the General Clauses Act and to the decision of this Court in *Avudulla* v. *Mahadevi*.(1) It is provided by section 1 of Act I of 1887 that the Act shall come into force at once and by section 5 that, whenever a Court makes a decree for the ejectment of a tenant, it shall determine the amount of compensation (if any) due to the tenant for improvements and make the decree conditional on the payment of that amount to the tenant. It is further provided by section 7 that nothing in any contract made after the 1st 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.

The present suit was instituted after the 1st January 1886, and section 7 discloses an intention to recognize the tenant's right to claim compensation from that date in accordance with the provisions of the Act, notwithstanding an express contract to the contrary. The customary mode of computing compensation cannot have a higher effect than an express contract. The decision in *Avudulla* v. *Mahadevi*(1) is not in point. This second appeal cannot be supported and is dismissed with costs. The memorandum of objections is not pressed and it is also dismissed with costs.

(1) Appeal No. 164 of 1887 (not reported).