APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

[In S.A. No. 1321 of 1888.]

1889. Feb. 8, 12. July 8. Aug. 13.

VALIA TAMBURATTI (PLAINTIFF), APPELLANT,

v.

PARVATI AND OTHERS (DEFENDANTS, Nos. 1—3), RESPONDENTS.*

[In S.A. No. 1367 of 1888.]

PARVATI AND OTHERS (DEFENDANTS), APPELLANTS,

v.

VALIA TAMBRUATTI AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Malabar Compensation for Tenants' Improvements Act—Act I of 1887 (Madras), ss. 1, 2, 4, 6—Mode of assessing compensation for improvements.

The sum to be allowed for compensation for a tenant's improvements under Act I of 1887 (Madras) is not to be determined by capitalizing either the annual rent or the annual increment due to the improvement, but a reasonable sum should be awarded, assessed with reference to the amount by which the market value or the letting value or both has been increased thereby; and the Court should take into consideration the actual condition of the improvement at the time of the eviction, its probable duration, the labor and capital which the tenant has expended in effecting it and any reduction or remission of rent or other advantage which the landlord has given to the tenant in consideration of the improvement. In the absence of evidence as to the actual market value in the place where the land is situated, the reasonable mode of estimating the compensation consists in taking the cost of the improvement and interest thereon and in adjusting the compensation to be awarded with reference to the matters specified in section 6.

SECOND APPEALS against the decree of V. P. deRozario, Subordinate Judge at Palghat, in original suit No. 1012 of 1887, modifying the decree of S. Subramanya Ayyar, District Munsif of Temelprom, in original suit No. 362 of 1886.

The predecessor in title of plaintiff No. 1 had demised certain land, now in question, on kanom to the tarwad of defendants Nos. 1—3 in July 1874. Plaintiff No. 2 claimed, under a second mortgage, from plaintiff No. 1 and defendants Nos. 4—12 were sub-mortgagees under defendants Nos. 1—3.

* Second Appeals Nos. 1321 and 1367 of 1888.

The plaintiffs brought this suit to redeem the above kanom and recover the land with arrears of rent. The defendants pleaded that they had made improvements on the land.

The District Munsif passed a decree for the plaintiff, allowing to the defendants Rs. 85-10-8 for their improvements. On appeal, the Subordinate Judge modified this decree by allowing Rs. 837-4-0 for the improvements.

Plaintiff No. 1 and defendants Nos. 1—3 preferred these cross-appeals against this decree of the Subordinate Judge.

Subramanya Ayyar and *Sundara Ayyar* in support of the plaintiff's appeal.

Bhashyam Ayyangar and *Govinda Menon* in support of the defendants' appeal.

JUDGMENT.—This is a suit for the redemption of land demised on kanom upon payment of the value of improvements.

Compensation is claimed for the following improvements :—(1) the conversion of one-crop into two-crop land, (2) the conversion of paramba into one-crop land, (3) the conversion of paramba into seed-bed, (4) trees. The District Munsif awarded Rs. 85-10-8 as the value of improvements. The defendants appealed and the Subordinate Judge ordered the plaintiff to pay Rs. 837-4-0 as compensation.

Both plaintiff and defendants have appealed, the former on the ground that the Subordinate Judge has not arrived at a correct estimate of the value of the improvements effected by conversion and that he has allowed compensation for trees of spontaneous growth; the latter on the ground that the principle adopted by the Subordinate Judge was unsound and injurious to their interests. It is not clear on what principle the Subordinate Judge has proceeded. He states that the increased value of a holding is determined by the higher rent which the landlord will be able to obtain by reason of the improvement, and appears to think that the only way to arrive at the amount due to the evicted tenant is to capitalize the enhanced produce of the land at so many years' purchase. He finds that, in consequence of the improvements effected by the tenant, the holding yields 423 paras of paddy in excess of what it yielded when demised. Taking into consideration the fact that the tenant has by long enjoyment more than recouped the actual costs of the reclamation, Rs. 338 and the interest thereon, and that the improvement is a permanent one,

he awarded Rs. 600, the value of six years' increased profits, as compensation. On what ground he selected the number six is not apparent. In another portion of the judgment he suggested ten times the annual produce as the proper compensation.

We are unable to accept this method of ascertaining the value of improvements.

The word improvement is defined in Madras Act I of 1887 as meaning "any work which adds to the value of the holding, "provided (1) that the work is suitable to the holding and (2) that "it is consistent with the purpose for which it is let." By section 4 it is provided that, on eviction, every tenant shall, any custom to the contrary notwithstanding, be entitled to compensation for all improvements effected by him or his predecessor, provided they have not been already paid for. Section 6 of the Act then lays down the principles on which compensation is to be awarded. It provides that the compensation to be paid shall be the amo[illegible] by which (1) the value of the holding or (2) the produce of [illegible] holding or (3) the value of that produce is increased. [illegible] wording of the section is not felicitous, but we take it that [illegible] object which the legislature had in view was to secure to [illegible] tenant the full value of his improvements and that it recogni[illegible] what is an undoubted fact, that in the different taluks of Mal[illegible] such value had been habitually ascertained in various and arbitr[illegible] ways. In order to secure uniformity in the assessment of comp[illegible] sation, the legislature would appear to have intended that [illegible] Court should, in arriving at a conclusion as to the amount [illegible] look at the matter from every point of view. To take the prese[illegible] case as an example, the market value of the holding may [illegible] materially increased (in other words, the holding may, in con[illegible] sequence of the improvement effected, fetch a higher price in the market than before), or the letting value of the holding may have been enhanced, and the landlord may be enabled to demand and obtain from the in-coming tenant a higher rent either in money or kind. The Court is bound to ascertain the amount by which the market value or the letting value or both has been increased by the improvement. But in arriving at a conclusion on these points the Court must take certain other matters into consideration, viz. the actual condition of the improvement at the time of the eviction its probable duration, the labor and capital which the tenant has expended in effecting it, and any reduction or remission of rent

or other advantage which the landlord has given to the tenant in consideration of the improvement. The amount of compensation to be awarded will be the sum, which, after due consideration of all these matters, appears to the Court to be, in the circumstances of the case, reasonable. No hard-and-fast rule, such as that suggested by the Subordinate Judge, can be laid down. Each case must be decided on its own merits.

The pleader for the plaintiffs does not impeach the principle on which the Judge has awarded compensation for the trees on the holding, but objects to the inclusion of certain trees (iripa, puvam, bamboo, and margosa), which were held by the District Munsif to be trees of spontaneous growth. The tenant would be entitled to compensation for such trees if it were found that he had protected or maintained them; but the Subordinate Judge has recorded no finding on this point.

" The Subordinate Judge will, therefore, be required to submit "evised finding (with reference to the above remarks) as to the "npensation to be awarded to the defendant for conversion and "provement of the land and as to the amount of compensation, "ny, to be awarded for trees of spontaneous growth. He will "mit his finding within six weeks from the date of receipt of "s order.

" Fresh evidence may be adduced. Ten days will be allowed "er posting of the finding in this Court for filing objections.

" In accordance with the above order, the Subordinate Judge "urned his finding as follows:—

"I am directed to submit a revised finding (with reference to the "remarks contained in the order of remand) as to the compensation to "be awarded to the defendant for conversion and improvement of the "land and as to the amount of compensation, if any, to be awarded "for trees of spontaneous growth.

"Neither party has adduced any fresh evidence.

"As regards the trees, it is observed in the order that iripa, "puvam, bamboo, and margosa were held by the Munsif to be trees "of spontaneous growth. I beg respectfully to point out that the "trees, which the Munsif held to be of spontaneous growth, are teak "and some others referred to in the twenty-second paragraph of his "judgment, for which no compensation was allowed by him or by me. "The trees above described are those referred to in the twenty-first "paragraph of the Munsif's judgment, which were not asserted to be "spontaneous, which the evidence showed to be planted and for which

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"compensation was allowed by him. No appeal was preferred by "plaintiff to this Court against the Munsif's decision, nor was any "objection filed.

"As regards the conversion and improvement of the land, I have, "in the fourteenth paragraph of my judgment, stated my reasons for "the opinion that the annual produce, that is, net rent of the land "demised, was increased by 423 paras of paddy, the value of which "is about Rs. 100, by reason of the labor and capital valued at "Rs. 338 employed by the tenant in the conversion and improvement "of the land. No fresh evidence has been adduced by either party, "nor any argument advanced, to show my estimate to be incorrect.

"The amount to be awarded as compensation for an improvement "under the Improvements Act 'is the amount by which the value, or "the produce of the holding, or the value of that produce is increased "by the improvement.' In the present case the produce of the land "has been increased by 423 paras of paddy per annum, the price of "the increased produce at the current rate being about Rs. 100. "what amount has the increased produce of Rs. 100 per annum "creased *the value of the holding?* The value contemplated by the "is, as the title of the Act indicates, the market value. The va "to be ascertained is the increased market value of the 'holdi "by reason of the improvement.

"'Holding' means land forming the subject of tenancy, or "defined in the Bengal Tenancy Act, from which many of the p "visions of the Improvements Act have been taken, it means "parcel or parcels of land held by a rayat and forming the subject "a separate tenancy.' The value of the holding is the value of "leasehold or the letting value, and not the value of the freehold "the jenm value. The letting value of a land is not always in "direct ratio to its proprietary value. The proprietary value o "land may be increased without any influence on the rent. Th "are lands which yield no rent and still have a proprietary value.

"What I have to determine is the amount by which the mark "value, or the letting value of the holding, is increased by the "improvement. It is not easy to determine the market value, for "the tenant's improvement under 'the Malabar Compensation for "Tenants' Improvement Act, 1886,' is a commodity which has never "before been in the market. The landlord's estimate of the value "never accords with the tenant's and the Court's estimate agrees "with neither. While one Court estimates the value of the tenant's "improvement at the cost of production and one year's produce, "another Court estimates it at twelve times the annual produce. The

"market value (in the ordinary acceptation of the term) of the pre- "sent holding after the expiration of the lease may be said to be an "uncertain value, for, of the several elements which constitute it, "only some are constant, the cost of production and yearly produce, "if this latter which varies with the season may with propriety be "termed constant. The *term* for which the produce can be enjoyed "is uncertain, for it would depend solely upon the pleasure of the "landlord.

"The letting value alone can furnish some help in determining "the value of the improvement.

"The higher rent which the landlord may be enabled to demand "and obtain from the in-coming tenants is 423 paras of paddy or "Rs. 100 per annum. This is the profit which the landlord will "derive annually from the holding. The exchange value of the "profit must be a certain number of years' purchase of the rental. "The number of years cannot exceed twenty, for twenty times the "yearly rent is the proprietary value of the land. If the value of the "jenm is only twenty times the produce, it is clear that the letting "value must be less. It appears to me that a sum sufficient at the "current rate of interest (5 per cent. when land is the security) to "replace the capital on the expiration of the usual term of a lease of "twelve years should be taken to be the letting value. In the pre- "sent case, the sum which, at the usual rate, would be replaced at "the end of twelve years is Rs. 900. This sum would be equivalent "to nine years' produce, and it is what the tenant would be entitled "to, if, on consideration of certain other matters, to which regard "must be had in fixing the amount of compensation, it is not to be "increased or reduced. These matters are—

"(*a*) The condition of the improvement and the probable dura- "tion of its effects.

"(*b*) The labor and capital required for the making of the "improvement.

"(*c*) Any reduction or remission of rent, or any other advantage "given by the landlord to the tenant in consideration of "the improvement.

"With regard to clause (*a*), the improvement is of a permanent "nature. The landlord, after he has replaced the capital by the "produce of the land in twelve years, has the benefit of the improve- "ment for an indefinite period free from any burden. The present "improvement is of a different kind from planting of trees or plants, "the effects of which are of short duration. Would nine years' "produce be a sufficient compensation? To determine this, we

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"have to look also to the amount of labor and capital required for "the improvement.

"(b) In the present case the amount of the capital and labor "employed in producing an improvement of a permanent nature is "Rs. 300. The effect produced is an income of Rs. 100 per annum. "I think, therefore, nine years' produce, Rs. 900, or three times the "amount of the capital and labor expended by the tenant is not an "inadequate compensation. The extra Rs. 600, if invested by the "tenant in land, will yield to him at the end of twelve years Rs. 900. "So that, while the landlord at the end of twelve years replaces the "price paid, Rs. 900, and has thenceforward the unrestricted use of "the improvement, the tenant at the end of the same term realizes "a profit of about Rs. 900 by his improvement.

"I have now to consider clause (c) whether any reduction should "be made in the amount of compensation found due upon considera-"tion of clauses (a) and (b) by reason of any reduction or remission "of rent or any other advantages given by the landlord to the tenant "in consideration of the improvement.

"In paragraph 11 of my judgment, I gave the following as my "reason for taking into consideration the length of time (30 years) "during which the tenant has had the benefit of the improvement at "an unenhanced rent:—

"'It is contended that the profits realized by the tenant by the "improvement should not be taken into account unless there is a "special clause in the lease allowing the tenant any reduction or "remission of rent or any other advantage. I do not think any "special clause necessary. If a tenant, who is expressly or impliedly "allowed to make improvements on a land let to him for a certain "number of years at a fixed rent, makes the improvement and enjoys "the produce without paying any increased rent, he enjoys an ad-"vantage impliedly allowed to him by the landlord in consideration "of the improvement. That advantage should be taken into account "in estimating the compensation due to him.'

"Taking this advantage into account, I allowed the tenant six "years' produce.

"I have now, upon re-consideration, found reason to alter my "original opinion. The land was let for a certain rent, and that rent "was the consideration for the use of the land by the tenant. That "the legislature did not intend that the length of time during which "a tenant has had the benefit of the improvement at an unenhanced "rent should be taken into consideration is clear from the fact that "this clause, which appears in the Bengal Tenancy Act, section 83, "clause (e) in addition to clause (c) of the Improvements Act is not

"incorporated in this latter Act. The former Act takes into con-
"sideration both the 'reduction or remission of rent or any other
"advantage given by the landlord to the rayat in consideration of the
"improvement' [clause d (1)] as well as 'the length of time during
"which the rayat has had the benefit of the improvement at an unen-
"hanced rent' [clause (e)]. The provisions in the Bengal Tenancy
"Act show that enjoying the benefit of the improvement at an
"unenhanced rate is distinct from, and is not comprehended in, the
"advantage contemplated in the preceding clause. The legislature
"having had this Act before it when it framed the Improvements
"Act, the omission of the last clause in the latter Act seems inten-
"tional. The legislature was probably apprehensive that, if this
"clause were introduced in the Act, advantage would, in some cases,
"be taken of it by the landlord to deprive the tenant of all compen-
"sation and thus defeat the main object of the Act.

"I am of opinion, therefore, the fact 'that the tenant has enjoyed
"the increased produce for about thirty years without paying any
"additional rent' should not be taken into consideration in ascertain-
"ing the amount of compensation.

"My finding on the second issue referred to me is that the amount
"of compensation due to the tenant for the conversion and improve-
"ment of the land is Rs. 900."

These second appeals having come on for final hearing, the Court delivered the following judgment.

JUDGMENT:—The finding returned by the Subordinate Judge is that the amount of compensation due to the tenant for the conversion and improvement of land is Rs. 900. Both the appellants and respondents object to it, and the question is whether the compensation is fixed in accordance with the provisions of Act I of 1887. These are discussed in our former judgment and it only remains for us to consider whether they have been correctly applied to the facts of this case. The letting value of the holding, it is found, has been increased by 423 paras of paddy, of which the price at the current rate is Rs. 100. The capital and labor expended for effecting the improvement are estimated at Rs. 338. Neither party has attempted to show what is the market value of the holding, where it is situated, and what addition it has received by reason of the improvement. The improvement is found to be of a permanent character and the tenant has had the benefit of the enhanced rent for nearly thirty years, the porapad payable to the landlord being the same throughout, viz., As. 13-9

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a year. The Subordinate Judge drew a distinction between the proprietary value and the letting value of the land and estimated the former at twenty times the rent and the latter at the sum sufficient at 5 per cent. per annum to replace the capital expended on the expiration of the usual kanom period of twelve years. He took this amount to be Rs. 900 and referring to clauses (*d*) and (*e*), section 83, of the Bengal Tenancy Act, held that the benefit of the improvement, which the tenant had had, was not a matter to be taken into consideration under section 6, explanation (*e*). There is no provision in the Act for capitalizing either the annual rent or the annual increment due to the improvement. The intention was to provide an adequate compensation for the out-going tenant in substitution for the arbitrary and varying rates at which compensation had been previously assessed.

The mode of capitalizing the additional rent, which the Subordinate Judge has adopted, tends also to introduce an arbitrary and a variable standard. There is no evidence to warrant the assumption that twenty or twelve years' purchase at 5 per cent. is a correct measure of the market value in every part of Malabar. In the absence of evidence as to the actual market value in the place where the land is situated, the reasonable mode of estimating the compensation consists in taking the cost of the improvement and the interest thereon at the local rate during the period that has elapsed subsequent to the improvement and in adjusting the compensation to be awarded with reference to the matters specified in section 6. This would replace the capital laid out by the tenant and thereby provide an adequate compensation as far as it can be ascertained, in cases in which there is no evidence of the market value. We cannot accede to the suggestion made by the Subordinate Judge that the period for which the tenant has had the benefit of the enhanced rent is not intended to be taken into account. It may be that clause (*e*), section 83, of the Bengal Tenancy Act, was considered to be explanatory of clause 2. As the kanom is ordinarily redeemable on the expiration of twelve years the landlord's forbearance after twelve years to raise the rent payable to him clearly implies an intention to confer an advantage on the tenant.

In cases like this, however, in which there is no evidence as to the actual market value, regard should be had in adjusting the compensation to the fact that, in the absence of a special agree-

ment, the tenant ordinarily expects to have the capital expended replaced, though the benefit of the enhanced rent, which he has had, may be set off against the interest which he lost on the capital. The tenant ordinarily spends his income received from the land and he is not expected, in the absence of express agreement, to replace his capital out of it. It would, we think, be reasonable to allow the tenant the actual cost of effecting the improvement, as he would otherwise lose both the holding and the money spent upon it, and would be placed, on eviction, in a position much worse than he would be in if he spent no money on improving the land. We would, therefore, fix the compensation due to the tenant for the conversion and improvement of the land at Rs. 338.

The objection in regard to trees of spontaneous growth is not pressed.

The decree of the Subordinate Judge will be modified accordingly. Each party will bear his own costs in this Court.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.

APPAYASAMI (DEFENDANT), APPELLANT,

v.

SUBBA (PLAINTIFF), RESPONDENT.*

1890. Feb. 14, July 22.

Rent Recovery Act (Madras)—Act VIII of 1865, *ss.* 2, 7.

In a suit by a tenant against a zamindar to release an attachment made under Rent Recovery Act, s. 40, it appeared that, according to the kistbandi obtaining in the zamindari, rent was payable in monthly instalments, commencing with November in each fasli:

Held, that the unit for the rule of limitation prescribed by Rent Recovery Act, s. 2, for proceedings by the landlord was the aggregate rent in arrear at the end of the fasli.

SECOND APPEAL against the decree of H. T. Ross, Acting District Judge of Madura, in appeal suit No. 396 of 1888, affirming the decision of C. H. Mounsey, Acting Sub-Collector of Madura, in summary suit No. 25 of 1888.

* Second Appeal No. 667 of 1889.