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attached on the 9th March 1882, and in the month of April had obtained orders for sale.

This being so, we are of opinion that a legal relation was constituted between the appellants and their judgment-debtor before the Act came into force and that out of this relation arose a right to have the order for sale carried out. They are entitled to sell under the order, whereas if section 99 of the Transfer of Property Act is applicable they cease to be so entitled when the Act came into force.

We are therefore of opinion that the plaintiff is not entitled to rely on section 99, and we are supported in this view by the decision in *Dinendra Nath Sannyal* v. *Chandra Kishore Munshi*(1).

The decree of the District Judge must be reversed and that of the District Munsif restored with costs in this and in the Lower Appellate Court.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Benson.

1895. September 5. 1896. January 6, July 17.

KUNHI CHANDU NAMBIAR (PLAINTIFF), APPELLANT,

v.

KUNKAN NAMBIAR AND OTHERS (DEFENDANTS), RESPONDENTS *

Suit to redeem Kanom—Malabar compensation for Tenants' Improvements Act—Act I of 1887 (Madras), s. 3.

The sum to be allowed for tenants' compensation for improvements under Act I of 1887 (Madras) is to be calculated in proportion to the extent to which the estate has been permanently improved. The improvement for which compensation is payable as defined in s. 3 † of the Act is not the tree itself, but the work of planting, protecting and maintaining it. The calculation must not be based on the future produce of the tree.

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(1) I.L.R., 12 Calc., 436.

* Second Appeal No. 1742 of 1894.

† Section 3 is as follows :—

(1) For the purposes of this Act, the term 'Improvement' means any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this Act :—

SECOND APPEAL against the decree of A. Thompson, District Judge of North Malabar, in appeal suit No. 465 of 1893, modifying the decree of A. Annasami Ayyar, District Munsif of Panur, in original suit No. 60 of 1893.

The facts of this case are as follow:—

Plaintiff sues the defendants to recover possession of 8 items of parambas with the improvements in them held by the defendants 1 and 2 under a registered kanom and kuikanom marupat, dated 30th Magaram 1055 (11th February 1880) granted to him by the latter on payment of the kanom and the value of the improvements, and for payment of Rs. 15 as rent in arrears and of future rent at Rs. 100 a year and costs.

He alleges the plaint parambas are his jenm property, defendants 3 to 9 are *tenants* of defendants 1 and 2 in possession of the parambas.

Defendants 1 and 2 admit plaintiff's title to the kanom kuikanom marupat of 1055 (1880) and the holding of the parambas under the marupat. They answer that the plaintiff's claim for payment of the rent sued for is premature, his claim for payment of future rent at Rs. 100 a year is irregular, and cannot be allowed, they have made improvements in the parambas of considerable value, they have no objection to surrender the parambas to plaintiff on receiving the kanom and the value of their improvements, and they are not liable for his costs in the suit.

Defendants 5, 8 and 9 state they are in possession of the parambas items 3, 4, 2, 6 and 7 as tenants of second defendant, they

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(*a*) the erection of dwelling houses, buildings appurtenant thereto and farm buildings;

(*b*) the construction of tanks, wells, channels, dams and other works for the storage or supply of water for agricultural or domestic purposes;

(*c*) the preparation of land for irrigation;

(*d*) the conversion of one-crop into two-crop land;

(*e*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste land which is culturable;

(*f*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*g*) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto;

(*h*) the planting, protection or maintenance of fruit trees, timber-trees and other useful trees and plants;

(*i*) the protection or maintenance of such trees, the same having grown spontaneously during the tenancy.

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have effected improvements in them of considerable value, and they should be paid the value of their improvements before eviction.

Sixth defendant states he is not in possession of any of the plaint parambas, and he is a necessary party to the suit.

The remaining defendants do not appear.

The point for decision in the suit is: "To what compensation are the tenant-defendants entitled for their improvements in the parambas?"

The District Munsif after referring the matter to a Commissioner for report for the purpose of fixing the value of the defendant-tenants' improvements and with regard to the compensation awarded for the trees (the only matter now in dispute) gave judgment as follows:—

The average annual produce of the bearing cocoanut trees, with the exception of one tree in the paramba item No. 1, may not exceed 25 or 30 nuts. The one good tree may yield about 50 nuts a year. It is an aged tree, considering the ages of the bearing trees, I think three years' purchase would be ample compensation for such trees. I allow Rs. 2 for each of the first mentioned trees and Rs. 3 for the one good tree. The arecanut trees in the parambas inspected are not young ones. The bearing areca trees cannot be paid for at more than 3 annas each. Each of the cocoanut trees which are just bearing must be paid for at least one rupee each. The costs of planting and cultivating a cocoanut tree up to a bearing age cannot be less than one rupee. One of the jack trees in the paramba item No. 1 shown as Jenmi's property should be included in the tenant's property. They should be paid its value Rs. 2. There is only one aged jack tree found in the paramba item No. 1. The admitted marupat exhibit A shows the jenmis had two aged jack trees in the paramba. Possibly the remaining one was lost or cut and removed subsequent to the date of the marupat. The average annual cocoanut produce of the paramba item No. 2 may be about 2,000 nuts. First defendant says the paramba will yield about 2,500 nuts a year. But I think his estimate is one made by an out-going and interested tenant and is too high. The Commissioner has omitted to include in this account a young and bearing jack tree worth Rs. 1-8-0—the property of first and second defendants in the paramba item No. 2.

The parambas items 3 and 4 are situated on the slope of a hill. Their soil is very dry. The fruit trees, &c., do not seem to thrive

in them. Of the bearing cocoanut trees shown in the Commissioner's account eight are useless, and will bear no fruit at all. Their head portions have become very thin, and they have only a few leaves on them. The tenant can be paid no value for them. The remaining bearing cocoanut trees may bear 5 or 10 nuts a year. The jack trees are stunted in growth. They are unfit to be used as timber. They cannot also yield plenty of fruit. The bearing cocoanut trees and jack trees in the parambas items 3 and 4 cannot be paid for at the rate of more than one rupee each. The bearing cocoanut trees in the parambas items 6 and 7 seem to be good and should be paid for Rs. 3 and Rs. 2 as their least value instead of Rs. 2 and Rs. 1-4-0 each given by the Commissioner in his account; and he decreed that on the payment of the amount of the kanom and compensation awarded to each tenant the kanom should be redeemed.

On appeal the District Judge disallowed the compensation awarded for the two jack trees and confirmed the decree in other respects.

Rgru Nambiar for appellant.

Narayanan Nambiar and *Kannan Nambiar* for respondent No. 1.

The Court (*Collins*, C.J. and *Parker*, J.) made the following

ORDER.—The Courts below have apparently calculated the value of the trees upon the capitalized value of their net produce for the estimated period of the life of the trees. This principle was *Shangunni Menon* v. *Veerappan Pillai*(1) held to be erroneous. A copy of the decision in that appeal—which was from South Malabar—will be forwarded to the District Judge and his attention will also be called to the decision in *Valia Tamburatti* v. *Parvati*(2).

As several of the trees for which compensation is asked are very old trees, it would seem that they must have been planted and in bearing condition long before the present tenancy which only dates from 1880. This being so, the question will arise whether the tenant is entitled to any compensation for improvements at all, except perhaps for the protection of the trees under section 3, clause (*h*), of Madras Act I of 1887. These trees, which were already fruit-bearing, must have been included in his lease and the rent fixed accordingly, and it may be that the *jenmi* has already paid compensation to the predecessor in the tenancy.

(1) I.L.R., 18 Mad., 407. (2) I.L.R., 13 Mad., 454.

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With these remarks we will ask for as a revised finding upon the issue in the case.

The finding is to be submitted within six weeks from the date of the receipt of this order, and seven days will be allowed for filing objections after the finding has been posted up in this Court.

In compliance with the above order, the District Judge submitted the following.

FINDING.—This suit has been remanded by the High Court for a revised finding to be returned as to the value of improvements to be awarded to the defendants in respect of the trees standing on the plaint parambas.

I am referred to two rulings of the High Court as to the principle to be followed in awarding compensation for improvements, *viz.*, the ruling in *Shangunni Menon* v. *Veerappan Pillai*(1) and that in *Valia Tamburatti* v. *Parvati*(2).

In their remand order in the present suit the High Court observe: "As several of the trees for which compensation is asked are very old trees, it would seem that they must have been planted and in bearing condition long before the present tenancy which only dates from 1880. This being so, the question will arise whether the tenant is entitled to any compensation for improvements at all, except perhaps for the protection of the trees under section 3, clause (*h*), of Madras Act I of 1887 * * * * and it may be that the *jenmi* has already paid compensation to the predecessor in the tenancy."

Exhibit A, the *marupat* sued on, clearly shows that the value of improvements has not been paid by the *jenmi* and that the tenants are entitled to get it on surrendering the land. Exhibit A enumerates the trees and fixtures belonging to the *jenmi* at the time of its execution and expressly stipulates that the tenants are to be paid the value of all the improvements *which they were in possession of then* and which they might make subsequently.

Exhibit A shows that the first and second defendants were in possession of the property before the date of its execution. There is a recital by the first defendant in a statement put in by him and plaintiff jointly that the well in *paramba* No. 4 was dug by first defendant in 1847. Exhibit B, which is a revenue account, shows that paramba No. 1 was assessed in first defendant's name in 1868.

(1) I.L.R., 18 Mad., 407. (2) I.L.R., 13 Mad., 454.

It is clear, therefore, that the first defendant was connected with the property some sixty years ago and it can be gathered from exhibit A that all the trees, except those specified as belonging to the *jenmi*, were planted either by him or by his immediate predecessor and that compensation for them has not been paid by the *jenmi*.

It remains to be considered what compensation is due to the tenants for the trees. I take it that they are entitled to receive compensation in proportion to the extent to which the estate has been permanently improved and that this is represented by the market value of the trees at the time of the surrender. The original outlay incurred may be taken to have been recouped by long enjoyment of the produce.

It seems to me that the Munsif has given the correct market value of the trees as they stood at the time of valuation. He has taken their age and fruit-bearing capacities into account and his estimate seems by no means too high.

I find that the market value of the trees has been correctly fixed by the Munsif and that the tenants are entitled to get the amount awarded by him.

On this second appeal coming on for hearing on return to the order of this Court.

Ryru Nambiar for appellant.

Narayanan Nambiar and *Kannan Nambiar* for respondents.

The Court (*Collins, C.J.* and *Parker, J.*) made the following

ORDER.—We must accept the District Judge's finding that no improvements have yet been paid for and therefore that the tenant is entitled to be compensated for all improvements that have been made.

The District Judge is right in stating that the tenant is entitled to compensation in proportion to the extent to which the estate has been permanently improved; but when he goes on to say that 'this is represented by the market value of the trees at the time of the surrender,' he is clearly in error. The 'improvement' for which compensation is payable as defined in section 3 of Madras Act I of 1887 is not the tree itself, but the '*work*' of planting, protecting, and maintaining the tree—*vide* clause *h*. Any calculation based on the future produce of the tree must assume that the tenant is entitled to be compensated for the loss of the use of the land; but to this he is obviously not entitled.

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since he can have no equity for the enjoyment of the land beyond the period of his lease.

The difficulty arises from the use of the expression 'market value' in the title of the Act. The market value of a fruit tree, apart from the soil in which it grows, would be almost nil; but the 'improvement' to be paid for is the 'work' of planting and nurturing the tree, and not the tree itself—which is the result of the work.

The compensation payable under section 6 is the amount by which the value of the holding has been increased by the 'work' and in ascertaining this the condition of the 'work' and the probable duration of its effects should be considered; but it should be borne in mind that it is the 'work' as defined in section 3, which is to be paid for, and not the result of the work.

With these remarks we must ask the present Acting District Judge to return a revised finding upon the issue.

Further evidence may, if necessary, be taken.

The finding is to be submitted within six weeks from the date of the receipt of this order, and seven days will be allowed for filing objections after the finding has been posted up in this Court.

In compliance with the above order, the District Judge submitted the following

FINDING.—This appeal has been remanded to ascertain the value of improvements calculated on the cost of planting and protecting the trees, constituting the 'work' to be paid for.

The issue was: "To what compensation are the tenant-defendants entitled for their improvements?"

The only dispute is as to the value of trees—cocoanuts, jacks, pepper-vines and areca-nuts. The District Munsif allowed Rs. 3 for one good cocoanut tree, and Rs. 2 for the bearing cocoanut trees, As. 3 each for the areca-nuts, Re. 1 for cocoanut trees just bearing, and Re. 1 to Rs. 2 for jack trees. My predecessor, Mr. A. Thompson, considered the District Munsif's valuation to be reasonable.

The plaintiff (appellant) has examined three witnesses and the respondents' three witnesses. They agree in stating that an acre of ground can raise as its main crop about fifty or sixty cocoanut trees, and also fifty areca-nut trees, four jack trees and about fifty pepper vines.

Plaintiff's first witness gives the cost of raising trees on an acre till they bear fruit at Rs. 35. The second witness fixes it at Rs. 25

or Rs. 30 and the third witness at Rs. 30. From their position they evidently speak from a *jenmi's* point of view and under-estimate the cost of the necessary work.

For the respondents' first defendant gives the cost for cocoanuts at Rs. 5 a tree or about Rs 300 per acre. The second witness, a mappila, gives the cost at Rs. 3 or Rs. 4 per cocoanut tree.

They seem inclined to over-estimate the cost. The third witness is M. Gopala Menon, a pleader of this Court, who gives a more reasonable estimate, corresponding very nearly with that given by the District Munsif.

Seeing that the work consists of raising walls, digging pits, watering for a year or two, manuring and watching for a period of at least twelve years for cocoanut trees, I find that the District Munsif's estimate for improvements is reasonable.

I, therefore, agree with the former appeal decree of this Court on the finding in question.

On the return of the above finding, the Court (Collins, C.J., and Benson J.) delivered the following

JUDGMENT.—We accept the finding of the District Judge as to the amount of compensation to be paid. His order as to costs is correct.

We extend the time for redemption to three months from this date. With this modification we confirm the decree of the District Judge.

The appellant must bear the respondent's costs in this appeal.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar.

CHINNATAMBI GOUNDEN (DEFENDANT No. 1), APPELLANT,

v.

CHINNANA GOUNDEN (PLAINTIFF), RESPONDENT.*

1896. April 27. July 8.

Contract—Continuing breach—Limitation—Civil Procedure Code, ss. 588 (28), 586.

T, who was the uncle of the first defendant and the father of the second defendant, agreed with C to sell certain land to him for consideration received and to cause the land, then standing in the name of a third party, to be registered in

* Appeal against order No. 21 of 1896.