

THE
INDIAN LAW REPORTS,
Madras Series.

—◆—
APPELLATE CIVIL—FULL BENCH.

*Before Sir Arnold White, Chief Justice, Mr. Justice
Wallis and Mr. Justice Sankaran-Nair.*

RANDUPURAYIL KUNHISORE, KARNAVAN AND MANAGER
OF HIS TAWWARD (PLAINTIFF), APPELLANT,

1908.
January 9.
February 4.

v.

NEROTH KUNHI KANNAN AND OTHERS (DEFENDANTS),
RESPONDENTS.*

*Malabar Compensation for Tenants' Improvements Acts I of 1887 and 1900—
Contracts entered into before 1st January 1886, effect of.*

Section 7 of the Malabar Compensation for Tenants' Improvements Act of 1887, which is reproduced as section 19 of the Act of 1900, does not affect the validity of contracts made prior to 1st January 1886, whether the improvement was made before or after the coming into operation of the Act of 1887.

Malikan v. Shankunni (1890) I.L.R., 13 Mad., 502, dissented from.

SECOND appeal from the decision of A. V. Venkataramana Pai, District Judge of North Malabar, in appeal Suit No. 39 of 1905, presented against the decree of T. V. Venkateswara Aiyar, District Munsif of Kuttuparamba, in Original Suit No. 534 of 1904.

This suit was brought to recover, with arrears of rent, and future rent a paramba leased to the first defendant by the plaintiff's late Karnavan under a registered deed dated 14th October 1881. The second defendant had purchased first defendant's right at Court sale subject to a mortgage for Rs. 400. The registered deed contained certain stipulations regarding the value of improvements.

* Second Appeal No. 1109 of 1905.

WHITE, C.J.,
 WALLIS AND
 SANKARAN-
 NAIR, JJ.
 ———
 HAN-
 DURAYIL
 KUNHISOOR
 v.
 NEROSE
 KUNHI
 KANNAN.

The second defendant claimed the full value of improvements made by him subsequent to 1887 while the plaintiff contended that the former was entitled to the value of improvements according to the terms of the lease deed. The *Munif* held that as the improvements were effected after 1887, the second defendant was not bound by the terms of the lease and decreed the full value according to the provisions of the Act. His decree was confirmed on appeal.

Plaintiff appealed to the High Court and the case was remanded for findings on the value of improvements. On receipt of the findings, the case came on for hearing before (Sir Arnold White, C. J., and Miller, J.) who made the following Order of Reference to the Full Bench.

The effect of the decision in *Viru Mammad v. Krishnan* (1) appears to us to be that the rate of compensation to which a tenant is entitled for improvements effected after 7th January 1887—the date of the coming into operation of the Malabar Compensation for Tenants' Improvements Act, 1886—is governed by the Act notwithstanding that a special contract was subsisting with reference to the rate of compensation at the date the Act came into operation. We find a difficulty in following this decision, and it appears to be inconsistent with the observations of the Full Bench in *Kerala Varmah Valia Rajah v. Ramunni* (2). We accordingly refer the following question to a Full Bench:—

In the case of a contract made prior to 1st January 1886 is the rate of compensation which a tenant is entitled to receive governed by the terms of the contract or by the provisions of The Malabar Compensation for Tenants' Improvements Acts of 1887 and 1900?

The case came on for hearing in due course before the Full Bench constituted as above.

V. Ryrn Nambiar for appellant.

C. Madhavan Nair for fifth respondent.

The Court expressed the following

OPINION.—We are of opinion that section 7 of the Act of 1887, which is reproduced as section 19 of the Act of 1900, precludes parties from contracting themselves out of the Act by any contract made after 1st January 1886, but that it does not

(1) (1898) I.L.R., 21 Mad., 149.

(2) (1893) 3, M.L.J., 53.

affect the validity of contracts made prior to 1st January 1886, whether the improvements were made before or after the coming into operation of the Act of 1887. As regards *Viru Mammad v. Krishnan*(1) a reference to the printed papers shows that the contracts of the defendants other than the sixth defendant were, in fact, made after 1st January 1886. We are unable to agree with the decision in *Malikan v. Shankunni*(2).

WHITE, C.J.,
WALLIS AND
SANKARAN-
NAIR, J.J.
—
RANDU-
PURAYIL
KUNHISORE
v.
NEBOTH
KUNHI
KANNAN.

Our answer to the question which has been referred to us is that in the case of a contract made prior to 1st January 1886, the rate of compensation is governed by the terms of the contract.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Miller.

V. O. CHIDAMBARAM PILLAI (SECOND PRISONER), APPELLANT
IN CRIMINAL APPEAL NO. 491 OF 1908.

1908.

October 6 to

9, 12 to 16,

19, 20.

November 4.

SUBRAMANIA SIVA (FIRST PRISONER), APPELLANT IN CRIMINAL
APPEAL NO. 503 OF 1908,

v.

EMPEROR, RESPONDENT IN BOTH.*

*Criminal Procedure Code—Act V of 1898, ss 196, 4 (b), 200, 225, 287, 537—
Indian Penal Code—Act XLV of 1860, ss. 109, 114, 124 (a) - Evidence Act
I of 1872, s. 14 (a)—Sanction under s. 196, Criminal Procedure Code, form
of—Sanction to prosecute under s. 124 (a) will authorise prosecution
under ss. 124 (a) and 114, Indian Penal Code—Complaint by Police
officer not a police report under s. 4 (b), Criminal Procedure Code—
Defects in complaint cured under s. 537, Criminal Procedure Code—
Irregular order to investigate after cognisance under s. 200, Criminal
Procedure Code—Defective charge under s. 124 (a), Indian Penal Code,
curable under ss. 537 and 225, Criminal Procedure Code—Intention of
speaker may be gathered from speeches other than those charged—Admis-
sibility of speeches to prove object of conspiracy—Statement forwarded
by accused admissible under s. 287, Criminal Procedure Code—Requis-
ites of offence under s. 124 (a), Indian Penal Code.*

Section 196 of the Criminal Procedure Code only requires that the complaint should be made upon authority from the Local Government and not that the actual complaint must be expressly authorised by the Local

(1) (1898) I.L.R., 21 Mad, 149. (2) (1890) I.L.R., 13 Mad., 502.

* Criminal Appeals Nos. 491 and 503 of 1908.