APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur Collins, Kt., Chief Justice, Sir T. Muthusami Ayyar, K.C.I.E., Mr. Justice Parker and Mr. Justice Wilkinson.

1891. September 24. October 19. 1892. August 9. September 26.

KERALA VARMAH VALIA RAJAH AVARGAL OF CHERAKKAL KOVILAGAM AND OTHERS (PLAINTIFFS NOS. 1 TO 3 AND 5 TO 17), APPELLANTS,

v.

ONDAN RAMUNNI, KARNAVAN AND MANAGER OF HIS TARWAD AFFAIRS AND OTHERS (DEFENDANTS NOS. 1 TO 15), RESPONDENTS.*

Malabar Compensation for Tenants Improvements Act (Madras) Act I of 1887, s. 7—Stipulation in lease to receive compensation at ordinary rate does not exclude operation of the Act—Rate of compensation claimable is that prevailing when compensation is paid.

The terms of a lease executed before the passing of Madras Act I of 1887 provided that the tenant at the time of surrender should receive compensation for fruit trees at the customary rate. Before the surrender Madras Act I of 1887 was passed and provided a rate of compensation for fruit trees. In a suit by the tenant to recover compensation under the lease:

Held, that the stipulation aforesaid did not exclude the operation of the Act, there being no such special contract as is contemplated by section 7 of the Act and that compensation must be paid at the rate provided by the Act.

APPEAL against the decree of C. Gopalan Nair, Subordinate Judge of North Malabar, in Original Suit No. 26 of 1889.

The appeal first came on for hearing before Sir Arthur Collins, Chief Justice, and Mr. Justice Parker who made the following:

ORDER OF REFERENCE TO THE FULL BENCH.—"A question has been raised in this appeal as to the applicability of the Malabar Improvements Act. By the terms of the lease under which the defendants hold it is provided that 'when the fruit trees begin to bear fruit we shall receive their kuikanam which you will cause to be paid at the ordinary rate and surrender the paramba.'"

It is contended that having regard to the terms of the lease the Subordinate Judge was wrong in giving the defendants

* Appeal No. 47 of 1890 reported under directions of Benson and Krishnaswami Ayyar, JJ.

compensation calculated in accordance with the provisions of the Act; and our attention is called to similar cases in which it has been held by the Court that the operation of the Act is effectually excluded by the agreement of the parties.

The argument in the principal case in *Unichennan* v. *Rarukutti*(1) is that, as section 7 is by its terms distinctly prospective, it must be inferred that it was intended that special contracts made before the date mentioned should stand unaffected by the Act. In the case of a contract, imposing obligations on the parties different from those under which they would have come by virtue of the customary law, there can be no doubt that it was intended to save such contracts relating to improvements from the operation of the Act. But in the present case, by the terms of the lease, no other obligation is imposed on the landlord than that which would have arisen in the absence of contract. He merely binds himself to do what the customary law, now replaced by the Act, required him to do. There was no intention to limit the tenant's right to compensation. In our opinion there is room for serious doubt as to whether the decisions above quoted are right, and therefore as the point is one of importance and likely to recur frequently, we resolve to refer to a Full Bench the following question, viz.:—

"Whether in the case of a lease containing a clause such as is found in the present one, the tenant is entitled to compensation in accordance with the provisions of the Act?"

The case again came on for hearing before the Full Bench constituted as above.

The Hon. Mr. *C. Sankaran-Nair* and *Ryru Nambiar* for appellants.

K. P. Govinda Menon for first respondent.

The Court expressed the following:

OPINION.—Exhibit A provides for the planting of four kinds of fruit trees for which compensation at the ordinary rate is to be paid on the surrender of the paramba. There is no special contract such as is contemplated in section 7, Madras Act I of 1887, which would exempt the agreement from the operation of the Act. The stipulation is apparently for the benefit of the landlord. Nothing is said about other improvements, but the

(1) Second Appeal No. 334 of 1890 (unreported).

COLLINS, C.J., MUTHUSAMI AYYAR, PARKER AND WILKINSON, JJ.

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right of the tenant to make customary improvements is not excluded.

The landlord is therefore bound to pay compensation for improvements at the ordinary rate, and the only question is whether that rate is to be the rate prevailing at the time compensation has to be paid or that prevailing at some former date.

We have no doubt that the landlord is bound to pay the rate prevailing at the date the compensation is paid.

That rate is now governed by Madras Act I of 1887 and we answer the question referred to the Full Bench in the affirmative. The compensation must of course be limited to improvements recognized as such in section 3 of the Act.

The appeal again came on for final hearing before Sir Arthur Collins, C.J , and Parker, J., who delivered the following :—

JUDGMENT.—The vakil for the appellants admits that as the opinion of the Full Bench is against him, the appeal must be dismissed. But as the Full Bench overruled some previous decisions we shall direct that each party bear his own costs in this appeal.

APPELLATE CIVIL.

Before Sir R. S. Benson, Officiating Chief Justice, and Mr. Justice Miller.

1909. September 27. October 7.

R. G. ORR AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

R. M. M. S. T. V. E. CHIDAMBARAM CHETTIAR AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code, Act XIV of 1882, ss. 2, 474—Order dismissing interpleader suit as not maintainable appealable as a decree within the meaning of s. 2—Under what circumstances a tenant can bring an interpleader suit against his landlord.

An order dismissing an interpleader suit is a decree within the meaning of section 2 of the Code of Civil Procedure (Act XIV of 1882) and is, as such, appealable.

The prohibition in section 474 of the Code of Civil Procedure against a tenant bringing a suit against his landlord and compelling him to interplead with another person not claiming through him, does not apply where the title of the

* Appeal No. 33 of 1907.