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inquiry into other matters than those which the Court is bound to determine would be better postponed to a later stage. Certainly I see no reason to hold that this is one of the exceptional cases.

The order of the learned District Judge appears to me correct and I agree with my learned brother that the appeal should be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1911. November 8 and 9

NEECHOOH PARU AMMA (PLAINTIFF), APPELLANT,

v.

CHATHANADATH KALASSERI KUNHIKANDAN *alias* MOOTHORAN AND FOUR OTHERS (DEFENDANTS NOS. 1, 2, 6, 13 AND 14), RESPONDENTS.*

Malabar Tenants' Improvements Act (Madras Act I of 1900), s. 5, 6, 9 to 18 and 19—Right to compensation—Contract to the contrary, made before 1886, effect of—Distinction between restriction of right to make improvements and of right to the value of improvements—Validity of each restriction.

Under the provisions of the Malabar Tenants' Improvements Act (Madras Act I of 1900), a tenant is entitled to the full value of his improvements according to the rates provided in sections 9 to 18; section 19 does not cut down his right under sections 5 and 6 to the value of his improvements according to the rates prescribed in the Act even where a contract was entered into before 1st January 1886, limiting his right with respect to the amount of compensation claimable by him. Accordingly a restrictive provision in a document limiting the amount of compensation cannot be enforced.

But contracts made prior to January 1886 limiting the right to make improvements are not affected by section 19 and are valid.

Kozhikot Pudiya Kovilagath Sreemana Vikraman v. *Chundayil Modathil Ananta Patter* [(1911) I.L.R., 34 Mad., 61], followed.

Held, on a construction of the following provision in a *kanom* deed of 1884, "If I make *chamayams* (or buildings) thereon exceeding Rs. 25 in value I shall only remove and take them at the time of surrender and shall not demand the value of improvements therefor"—that the meaning of the clause was not to

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* Second Appeal No. 540 of 1910.

restrict the *kanomdar* from building but to restrict his right to the amount of compensation if he built, to Rs. 25, if he is content to take it, regard being had to the absence of any right on the landlord to require the tenant to remove any building worth more than Rs. 25.

The provision for removing is merely a recognition of the right which a *kanomdar* has always possessed to remove any improvements made by him.

Angammal v. *Aslami Sahib* [(1911) 21 M.L.J., 891], referred to.

SECOND APPEAL against the decree of A. N. ANANTARAMA AYYAR, the Subordinate Judge of Calicut, in Appeal No. 660 of 1909, presented against the decree of P. RAMAN, the Principal District Munsif of Calicut, in Original Suit No. 589 of 1908.

The facts of this case are set out in the judgment.

J. L. Rozario for the appellant.

P. Kundu Panikar for third respondent.

C. V. Anantakrishna Ayyar for first, second and fourth respondents.

BENSON AND SUNDARA AYYAR, JJ.

JUDGMENT.—The question raised in this case is whether the defendants holding the lands sought to be recovered in the suit on a *kanom* executed in the year 1884 are disentitled under the terms of the *kanom* instrument, Exhibit A, to recover compensation for *chamayams* or buildings worth more than Rs 25. The first defendant is the purchaser in court-auction of the *kanom* right. The second defendant is a sub-mortgagee under the original *kanomdar* holding under a document executed by him before the date of Exhibit A (Exhibit A being the renewal of an earlier *kanom*). The sixth defendant is found by the Lower Appellate Court to have constructed his buildings worth more than Rs. 25 about the year 1883. The thirteenth and fourteenth defendants who also raised buildings worth more than Rs. 25 obtained an assignment of a portion of the lands included in the *kanom* in 1907, shortly before the suit. The Lower Courts held that the defendants mentioned above were not bound by the terms of Exhibit A which, they held, would disentitle them to claim a larger compensation than Rs. 25. The grounds on which this finding is based are—

(1) that Exhibit B, the *melcharth*, executed in favour of the plaintiff authorised him to pay the value of buildings erected by the prior holders without any limitation,

(2) that the *jenmi*, the seventeenth defendant, in bringing to sale the rights of the original *kanomdar* under Exhibit A described them as "the *kanom kuzhikur* and *chamayam* and all

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other rights thereon" over the property in question possessed by the *kanomdar*, and

(3) that the first defendant who before his purchase of the *kanom* took the mortgage Exhibit III in 1887 from the original *kanomdar* had no notice of any restriction contained in the *kanom* document of the *kanomdar's* rights to compensation for buildings.

We are of opinion that none of these grounds can support the conclusion arrived at by the Lower Courts. Exhibit III states that the *kanom* document, *i.e.*, Exhibit A, was handed over to the mortgagee, who must therefore be held to have had full notice of the provisions of Exhibit A. The sale certificate, Exhibit I, cannot be held to confer on the first defendant anything more than the rights which the judgment-debtor, whose rights he purchased, actually possessed. The provision in Exhibit B authorising the plaintiff to pay the value of *chamayams* to which the *kanomdar* might be entitled, could not enhance the rights possessed by the *kanomdar* under his own title-deed. Mr. Anantakrishna Ayyar for the respondents, however, seeks to support the judgment of the Lower Courts on the ground that the provision in Exhibit A restricting the *kanomdar's* rights to make *chamayams* and recover compensation for them, is not enforceable on account of the provisions of the Malabar Tenants' Improvements Act, I of 1900. In *Kozhikot Pudiya Kovilagath Sreemana Vikraman* v. *Chundayil Modathil Ananta Patter*(1) this Court held that under the provisions of that Act, a tenant is entitled to the full value of his improvements according to the rates provided in sections 9 to 18, and that section 19 does not cut down his right under sections 5 and 6 to the value of his improvements according to the rates prescribed in the Act even where a contract was entered into before the 1st January 1886 limiting his right with respect to the amount of compensation claimable by him. We adopt the law as laid down in that judgment; and, if Exhibit A can be rightly held to have merely limited the amount of compensation to which the *kanomdar* was entitled for buildings, we are of opinion that the restrictive provision in that document cannot be enforced. Mr. Rozario for the appellant contends that the document really

(1) (1911) I.L.R., 34 Mad., 61.

goes further and restricts the *kanomdar's* right to erect buildings at all if they are worth more than Rs. 25 and he argues that section 19 of the Act does not render such a contract entered into before the 1st of January 1886 invalid. The respondent contends that under sections 5 and 6 the *kanomdar* is absolutely entitled to the value of all improvements, and that section 19 which does not expressly provide that a contract before the 1st January 1886 restricting the right to make improvements is valid cannot be taken to modify the provisions of sections 5 and 6. We are unable to uphold this argument. We are bound to construe the Act so as to give some effect to every section of it. On the construction contended for by Mr. Anantakrishna Aiyar section 19 would be unnecessary, and, if we are to regard it as enacted *ex abundante cautela* as suggested by him, then the words "after the 1st day of January 1886" qualifying the contracts referred to in the section would be unnecessary if his construction be maintained. We are bound to hold that contracts prior to January 1886 limiting the right to make improvements are not affected by the section. It may be that section 19 did not intend to pronounce any agreements between the *jenmi* and his *kanomdar* as to what should be regarded as improvements suitable to the holding, invalid. The question then that we have to decide is what is the true nature of the provision in Exhibit A with regard to buildings to be erected by the *kanomdar*. The provision is in these terms: "If I make *chamayams* thereon exceeding Rs. 25 in value, I shall only remove and take them at the time of surrender, and shall not demand the value of improvements therefor." The meaning of the agreement in our opinion is that the tenant's only right with respect to buildings of more than Rs. 25 in value which he might erect is to remove them and that he is not entitled to demand their value. The provision for removing is merely a recognition of the right which a *kanomdar* has always possessed to remove any improvements made by him. See: *Angammal v. Aslami Sahib*(1). We are of opinion that the agreement that he should not demand the value of buildings worth more than Rs. 25 means nothing more than that he should not demand more than Rs. 25 for any buildings erected by him. We do not

(1) (1911) 21 M.L.J., 891.

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think that it was intended that, if the tenant was content with Rs. 25 for a building worth more than that amount, the landlord should be entitled to refuse to pay him anything for it. The object of the clause appears to be to provide a limitation on the amount which the tenant was entitled to claim for improvements and not to prevent him from constructing any buildings worth more than Rs. 25 at all. No right is given to the *jenmi* to require the removal of buildings worth more than Rs. 25 and to restore the land to its condition before erection of the building. In other words, the object was not to restrain the *kanomdar* from building, but to restrict his right to compensation if he built. The agreement was therefore, one regulating and restricting the amount of compensation to which the *kanomdar* was to be entitled, for buildings erected by him. The decision in *Kozhikot Pudiya Kovilagath Sreemana Vikraman* v. *Chundayil Modathil Ananta Patter*(1) is therefore applicable to the case. We uphold the judgment of the Lower Appellate Court on this ground and dismiss the Second Appeal but in the circumstances without costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1911. November 9 and 10.

SAHIB THAMBI MARAKAYAR (PLAINTIFF), APPELLANT,

v.

HAMID MARAKAYAR AND THREE OTHERS (DEFENDANTS), RESPONDENTS.*

Suit on Foreign judgment—Foreign Court's decree—Decree for money against "firm"—Some partners not served in foreign court—No personal liability—Foreign decree enforceable only against partnership property of the partners.

The general rule of law undoubtedly is that in suits where one person is allowed to represent others as defendants in a representative capacity any decree passed can bind those others only with respect to the property of those others which he can in law represent and no personal decree can be passed against them, although the parties on record *eo nomine* may be made personally

(1) (1911) I.L.R., 34 Mad., 61.

* Second Appeal No. 475 of 1910.