APPELLATE CIVIL—FULL BENCH.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Oldfield, Mr. Justice Sadasiva Ayyar, Mr. Justice Coutts Trotter and Mr. Justice Seshagiri Ayyar.

PUTHIAPURAYIL KANNYAN BADUVAN AND ANOTHER (DEFENDANTS NOS. 2 AND 3), APPELLANTS,

1918, July 19, 1919, March, 26.

v.

CHENNYANTEAKATH PUTHIAPURAYIL ALIKUTTI AND TWO OTHERS (PLAINTIFF, FIRST DEFENDANT AND L.R. OF FIRST DEFENDANT), RESPONDENTS.*

Lessor and lessee—Suit in ejectment from part of a holding, maintainability of—Right of suit of lessor, or of assignee of part of the reversion—Payment of compensation for tenant's improvements—Payment for improvements, whether on the whole or part of the holding necessary—Malabar compensation for Tenants Improvements Act (I of 1900), ss. 5 and 6—'Holding,' construction of—.

Held, by the Full Bench (SESHAGIRI AYYAR, J., dissenting), that a lessor is not entitled to eject a tenant from a part only of the holding, but the assignee of the reversion in part of the demised premises is entitled to eject a tenant for due cause from such part on payment of the value of the improvements to that part, and that this rule applies to tenancies in Malabar.

Per SESHAGIRI AYYAR, J.—Neither the lessor nor the assignee of a part of the premises can evict a tenant from a part of the premises during the continuance of tenancy; in the case of a terminated tenancy, the Malabar Compensation for Tenants Improvements Act does not contemplate the possibility of a partial eviction on payment of the value of improvements on a part of the holding.

SECOND APPEAL against the decree of M. G. KRISHNA RAO, the Temporary Subordinate Judge of Tellicherry, in Appeal Suit No. 476 of 1916, preferred against the decree of M. NARASINGA RAO, the District Munsif of Cannanore, in Original Suit No. 186 of 1914.

The material facts and contentions appear from the Order of Reference to the Full Bench.

The second appeal came on for hearing in the first instance before PHILLIPS and KUMARASWAMI SASTRI, JJ., who made the following

* Second Appeal No. 94 of 1917 (F.B.).

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ORDER OF REFERENCE TO A FULL BENCH.

PHILLIPS, J.—In this case a lease was granted to the second defendant for a period of eight years. This lease comprised 11 items of property, and the period of eight years had expired at the time of suit. The plaintiff is a melcharthdar from the jenmi, and his melcharth refers to only one item of the second defendant's lands.

Two minor points have been raised in this Second Appeal, firstly, that the melcharth which was obtained by one Ussan Parikutti and assigned to the second defendant was invalid, and secondly, that notice to quit had been waived by subsequent receipt of rent. These two points were found against the second defendant by the District Munsif, and were not argued before the Subordinate Judge, and we agree with the District Munsif that they must be found against the appellant for the reasons given by him. The fact that the appellant now urges, i.e., that the properties were devaswom properties and not ordinary tarwad properties, is a question of fact which cannot be decided without evidence, and it is very doubtful if it can affect the merits of the case.

The main point for consideration is whether the plaintiff is entitled to evict the second defendant from one item of his leasehold lands without paying compensation to him for improvements in the other items. The Subordinate Judge has found that he can do so, and the reasons he gives are that the rent of each of the items is stated separately in the lease deed, Exhibit X, and that the term of each is to expire after eight years, and there is no agreement forbidding the lessor to recover each item separately. As a matter of fact the rent of the plaint item is not stated separately in the lease, but its rent is lumped up with that of the only other *nilam* contained in the lease, the other nine items all being *parambas*.

It has no doubt been held that, when there is a severance of the interest of the landlord, the owner of the severed interest can sue to recover the portion of the property which has fallen to him, vide *Korapalu* v. *Narayana*(1) and *Syed Ahmad* v. *Magnesite Syndicate, Ltd.*(2) But these decisions are not decisions from

(1) (1915) I.L.R., 38 Mad., 445. (2) (1916) I.L.R., 39 Mad., 1049.

Malabar, and hardly seem to bear on the question of the tenants' rights under the Improvements Act. In this case plaintiff is not the original landlord but a melcharthdar, a lessee under the landlord, but there seems to be no reason why if a landlord cannot eject from one item only, the assignee from the landlord should be allowed to do so. Under the Malabar compensation for Tenants' Improvements Act, a tenant is entitled to resist eviction until he has been paid compensation for his improvements, but it has been held in an unreported case of *Krishnan* v. *Govindan*(1) that, when the lease is divisible and when no hardship is caused to the tenant by ejecting him from one item of land without paying for his improvements in the other items, he can be evicted from a portion only of the leased property without compensation for improvements on other items. The judgment does not decide definitely what the tenant's rights are under section 5 of the Malabar Improvements Act. It appears to consider that his rights are dependent on facts, such as, whether the lease can be divided up into parts, and on the hardship that the tenant might suffer through the division of the property and ejectment from one portion of it. The object of section 5 of the Act appears to be to give the tenant some security that he will receive the value of the improvements made upon the land, and the question that has to be decided is whether the whole of the land held on lease is the security for such payment, or whether only the items of land on which those improvements stand form the security. Section 5 is in very general terms and merely says that the tenant shall on ejectment be entitled to compensation for improvements, and is entitled to remain in possession until ejectment in execution of a decree or order of Court. The language of the section would seem to imply that a tenant can resist eviction from any portion of his holding until he gets compensation, and there is no section of the Act which specially authorizes eviction from a part of the holding without paying compensation. In section 3, clause (3), 'Improvement' is defined as any work or product of a work which adds to the value of 'the holding,' is suitable to it and consistent with the purpose for which the holding was let, mortgaged or occupied; and again section 9 relates to improvements which enhance the

(1) S.A. No. 2180 of 1914 (unreported).

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value and annual produce of 'the holding.' The use of the word 'holding' seems to imply that the whole of the land demised under the lease has to be considered when there is a question of compensation for improvements; and we see in section 6, clause (2), that if a tenant is found to be in arrears with his rent, the Court is directed to set off such sum against the amount found due for improvements. If therefore a landlord is entitled to evict a tenant from a portion of his holding on which no improvements have been made, he might obtain a decree for ejectment and for arrears of rent, and the tenant would not be able to set off against arrears of rent the amount due for improvements, and he would thus lose the benefit of section 6 (2). We think that this is a very important question which in many cases is likely to arise in Malabar, and consider it advisable to refer it to the decision of a Full Bench of this Court, more especially in view of the decision in *Krishnan* v. *Govindan*(1) which does not seem to have held that there is any definite principle underlying the provisions of the Act as regards the security which the tenant has for the payment of his improvements. We, therefore, refer for the orders of the Full Bench the following question:—

When several items of property are comprised in a lease, is the landlord entitled to evict the tenant from one of those items only, without paying him compensation for the improvements on other items?

ON THIS REFERENCE—

N. P. Narasimha Ayyar for *E. Ramaswami Ayyar* for appellant.—Partial eviction is not allowed in law. Sections 5 to 18 of the Malabar Compensation for Tenants Improvements Act do not contemplate partial eviction. Sections 7 and 8 refer to 'holding' and not a part of the holding. The Act (I of 1900) only consolidates the Customary Law of Malabar. There was a common law right in the tenant to be paid the improvements before eviction from the holding. It is not affected by the Act. Section 3 defines holding; section 4 enumerates the holdings. Until the tenancy ceases, the tenant can remain in possession of the holding. All claims between lessor and lessee should be completely adjusted before possession is taken by lessor; see

(1) S.A. No. 2180 of 1914 (unreported).

Abdulla Koya v. *Kullumpurath Kunaram*(1). The ruling in *Vasudevan Nambudripad* v. *Valia Chathu Achan*(2) shows that the position of a tenant in Malabar is higher than that of an ordinary lessee. Moore's Malabar Law at page 237 shows that there is no difference between kanom amount and improvements. There is no splitting of the holding contemplated in the Act. The tenant is not given a right of suit for compensation for the improvements, but only a right to retain possession before eviction. Reference was made to *Sri Raja Simhadri Appa Rao* v. *Prattipatti Ramayya*(3), *Syed Ahmad* v. *Magnesite Syndicate Ltd.*(4), and distinguished.

Eroman Unni for respondent:—The question is "what is the general law as to partial eviction apart from the Malabar Compensation for Tenants Improvements Act," and "does the Act alter the general law"? The general law is that after the termination of the term of the tenancy, there can be partial eviction; see *Ishwar Chunder Dutt* v. *Ram Krishna Dass*(5), Cole on Ejectment, page 44; *ibid.*, Appendix, page 697; *Cutting* v. *Derby*(6). A tenant in common can give notice to quit for his own share; on the expiry of the term of the tenancy, the landlord can recover his share of the rent. The tenant has no charge for the value of the improvements; he has only a possessory lien; see *Achuta* v. *Kali*(7). Right to improvements is not a charge on the holding and cannot be attached in execution of a decree, see *Anantha Bhattu* v. *Anantha Bhatta*(8). Section 9 of the Act shows how improvements are to be valued; if the suit is to eject a tenant from a holding in which a tank has been dug, it may be that the tenant will get compensation for value of the increased productivity of other lands. The improvements to be paid for under sections 5 and 6 are those on the land or portion of the holding sued on for eviction. The Act does not say that the suit for ejectment must be in respect of the whole holding and on payment of compensation for improvements on the entire holding.

[SADASIVA AYYAR, J.—Suppose *A* and *B* demised *X* and *Y* to *C* while they were joint 40 years ago, and then they divide, *A*

(1) (1917) 33 M.L.J., 463, at p. 465.
(2) (1901) I.L.R., 24 Mad., 47 (F.B.).
(3) (1906) I.L.R., 29 Mad., 29.
(4) (1916) I.L.R., 39 Mad., 1049.
(5) (1880) I.L.R., 5 Calc., 902.
(6) (1776) 2 W. Black., 1075.
(7) (1884) I.L.R., 7 Mad., 545.
(8) (1919) 36 M.L.J., 92.

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getting X and B getting Y, and B wants to eject C from Y, why should not B do so without paying compensation on X also?] Yes, I submit B can do so: the Act does not prohibit it. The Act says only that on eviction from certain lands, certain things should be done as to improvements thereon and does not refer to other lands. Once the tenancy is at an end, assignee of a part can sue in ejectment of his portion on payment of compensation thereon. The tenancy is severable and each part owner of the reversion can recover, after the expiry of the term, his share of the holding. Second Appeal No. 2180 of 1914 is a considered judgment of this Court and is in my favour. Reference was made to *Mayankutti* v. *Kunhammad*(1), *Thema* v. *Kunhi Pathumma*(2), *Tripura Sundari* v. *Durga Chursa Pal*(3) and *Harendra Narain Singh Chowdry* v. *Moran*(4).

N. P. Narasimha Ayyar in reply.—The decision of the Privy Council in *Harihar Banerji* v. *Ramsashi Roy*(5) shows that notice to quit as to part of the holding is bad in law.

[SESHAGIRI AYYAR, J.—That assumes that there is a tenancy at the time of the notice to quit, but there is no tenancy in the present case after the expiry of the term.]

No, the Act (Malabar Compensation for Tenants Improvements Act) says that he is a tenant, even after the tenancy is determined, until compensation is paid; see Moore's Malabar Law, page 274.

OPINION.

WALLIS, C.J.

WALLIS, C.J.—The Malabar Compensation for Tenants Improvements Act, 1900, entitles a tenant who is sued in ejectment to compensation for improvements to the land from which it is sought to eject him, and authorizes him, notwithstanding the determination of the tenancy, to remain in possession until ejectment in execution of a decree, or of an order of Court varying that decree as provided in section 6 (3). Section 6 (1) provides that the decree is to direct that on payment by the plaintiff into Court of the amount found due for improvements the defendant is "to put the plaintiff into possession of the land with the improvements thereon". As under section 5 (2) the tenant

(1) (1918) I.L.R., 41 Mad., 641. (2) (1918) I.L.R., 41 Mad., 118.
(3) (1885) I.L.R., 11 Calc., 74. (4) (1888) I.L.R., 15 Calc., 40.
(5) (1918) 35 M.L.J., 707, at p. 714 (P.C.).

after decree is to continue in possesssion as a tenant, section 6 (3) provides for a re-valuation of the improvements when the plaintiff seeks to execute the decree with reference to the state of things then existing, and for an order of Court varying the decree accordingly. The only improvements for which compensation is payable under these sections are improvements to the land from which it is sought to eject the tenant, and they neither impose nor recognize any obligation on the plaintiff to pay for improvements to land from which the plaintiff does not seek and is not entitled to eject the tenant. We have therefore to consider the question referred to us apart from the provisions of the Act. A lessor cannot give a tenant notice to quit a part of the holding only and then sue to eject him from such part only, as pointed out quite recently by the Privy Council in *Harihar Bannerjee* v. *Ramasashi Roy*(1). Consequently, if the suit is brought by the original lessor the answer to the question referred to us must be in the negative because such a suit does not lie at all. Other considerations, however, arise, where, as in the present case, the original lessor has parted in whole or in part with the reversion in part of the demised premises. Under the general law such an assignment effects a severance, and entitles the assignee on the expiry of the term to eject the tenant from the land covered by the assignment. There never was any question about this, but it was held in England that, while the assignee of the reversion in part was entitled to the benefit of the covenants in the lease as regards such part, the result of the severance effected by the assignment was to destroy altogether the conditions in the lease, as for re-entry for non-payment of rent—Coke on Littleton, 215*a*. The law was altered as regards the case last mentioned by 22 & 23 Vict., cap. 35, s. 3, and generally, as regards leases made after the passing of the Act, by section 12 of the Conveyancing Act, 1881; see *Piggott* v. *Middlesex County Council*(2). Section 109 of the Transfer of Property Act gets over the difficulty by providing that "the transferee shall possess all the rights of the transferor in the part transferred" words which are large enough to cover both covenants and conditions. There is no question of a condition here, as the suit was to recover possession on the expiry of the

(1) (1918) 35 M.L.J., 707 (P.C.). (2) (1909) 1 Ch., 134, at p. 141.

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term. Under the general law the assignee of the reversion in part of the demised premises is entitled to bring such a suit, and there does not appear to be any ground for suggesting that the general law in this respect is inapplicable in Malabar. The learned Judges in their Order of Reference have referred to the provision in section 6(2) that "the money due by the plaintiff to the defendant for rent or otherwise in respect of the tenancy" is to be set off against the amount found due for improvements. The only rent due to a plaintiff suing as assignee of the reversion in part of the demised premises would be the apportioned rent in respect of the part assigned to him. There would be therefore no difficulty in applying the provision in question to such a case. Moreover, it is a provision in favour of the landlord, and cannot be regarded as enlarging the tenant's rights. The view I have taken is in accordance, as to the construction of the Act, with the decision of SADASIVA AYYAR and MOORE, JJ., in *Krishnan* v. *Govindan*(1) and, as to the question of severance, with the decision of SUNDARA AYYAR and SADASIVA AYYAR, JJ., in *Pullambil Krishnan* v. *Sankaran*(2) at an earlier stage of the same case. It was not suggested that there was any hardship to the tenant in that case or in this. If, however, it be apprehended that jenmis may be so unwise as to attempt to use the power of severance in a manner oppressive to their tenants, the proper course, it seems to me, is to move for an amendment of the Act.

I would answer that the lessor is not entitled to eject from a part only of the holding, but that the assignee of the reversion in part of the demised premises is entitled to eject for due cause from such part on payment of the value of the improvements to that part, and that this answer applies to tenancies in Malabar.

OLDFIELD, J.

OLDFIELD, J.—I agree with the answer just proposed to the reference and accept the reasoning, by which it is supported, unreservedly, so far as it relates to the effect of severance on a tenancy. I agree also that its effect is undiminished when, as in the case before us, the tenant is holding over and there has been no acceptance of rent, involving that the lease has been renewed.

I have, however, felt some hesitation regarding the application of Act I of 1900 as between the tenant and the transferee of a part of the leased property, because it has been argued that

(1) Second Appeal No. 2180 of 1914 (unreported).
(2) Appeal Against Order No. 85 of 1911 (unreported).

the Act is worded with reference to improvements to the holding and compensation is payable only for improvements on the holding, that is the whole property covered by the original lease, not for those standing on or affecting the transferred portion. And no doubt in section 3 (3) an improvement is defined with reference to the value of the holding and the purpose for which it is let; and in sections 4, 7, and 9 (1) improvements which increase the value of the holding are referred to directly. But there are also provisions, in which the reference is not to the holding, but to the tenancy, such reference being direct in sections 6 (2) and (3) and indirect in section 6 (1), where the reference to 'the land' may be read as to the land referred to in the definition of 'tenant' in section 3 (1). The question is then whether the use of the term "holding" was intended by the legislature to be distinctive and to mean the property originally leased, not the portion of it, from which in consequence of a subsequent transfer the tenant would be separately ejected. The result of so regarding it will be the exclusion of claims to compensation after severance from the purview of the Act, and we have been shown no reason for thinking that this was contemplated. The Act contains no definition of the term "holding"; and in the circumstances I am of opinion that a liberal interpretation of it is legitimate and I therefore concur in the conclusion reached by the learned Chief Justice.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—I agree with the judgment of my Lord and have nothing to add.

COUTTS TROTTER, J.

COUTTS TROTTER, J.—I agree with my Lord. The legislature might have created a substantive right in the tenant to compensation for his improvements enforced by a lien on his holding in its entirety. What in fact it has done is to make the right to compensation merely an adjunct to a suit in ejectment or for redemption. So far as I can see, the right itself does not even arise till such a suit is brought. That being so, the right must, it appears to me, be limited to the land which is the subject matter of the suit, i.e., the lands from which it is actually sought to eject the tenant.

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—The scope of the reference was considerably limited during the second argument before a Fuller Bench. The objection which I had raised to the suggestion that there can be no eviction from part of the premises during the

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continuance of the tenancy was not attempted to be answered by Mr. Eroman Unni on the second occasion. I feel no hesitation in saying that neither under section 109 of the Transfer of Property Act nor under the general law of the land is it competent to an assignee of a part of the demised premises to eject the tenant from that portion compulsorily during the period of the tenancy. Even if section 109 is capable of a different construction, I would hold that its operation should not be extended to agricultural tenancies in this country, because the rule of equity, justice and good conscience would be defeated rather than advanced by the extension of the doctrine of partial eviction to agricultural leases. As to the rule of English Law, I had formed an opinion at the first hearing that partial eviction before the expiry of the term of the tenancy is equally unavailing in England and I see no reason to change that view. But I do not think it necessary to discuss the point now. Therefore my answer to the question would be in the negative, if it is understood to refer to eviction before the expiry of the period of the lease.

But what we have to consider is a case of a terminated tenancy which by virtue of the Malabar Compensation for Tenants Improvements Act has not wholly ceased to be operative. There can be no doubt that the Act does not attempt to legislate as to whether there can be partial eviction or not. The legislature has only provided for events happening on the filing of a suit for ejectment. At the same time, to my mind it seems clear that it did not contemplate the possibility of a partial eviction. It, by the terms of sections 5, 6, 7 and 9, seems to have assumed that the lease under which the tenant came in would continue intact. In clause (1), section 5, the expression used is "notwithstanding the determination of the tenancy." This must have reference to the one which was created on the first entry and not to the split-up parts by the process of sale or assignment. Strictly speaking, unless the tenant attorns or otherwise acknowledges the fractional landlord, there would be no tenancy to determine. Again in section 6, clause (1), the word 'tenant' is used; in clauses (2) and (3) the word 'tenancy.' These words are not appropriate to the relationship which comes into existence by reason of the division of the demised premises, either by conveyance or assignment,

In sections 7 and 9, as if by way of variety, the language employed is 'holding.' Where can we have a 'holding' between the assignee of one of the demised premises and the quondam tenant of all the premises, unless a new tenancy is created in respect of it? If such a one is by act of parties brought into existence, the present question is easily answered. Otherwise I find it difficult to hold that on the expiry of the term of the lease, there is any 'holding' belonging to the assignee of a portion or "a tenant" in respect of it. It seems to me that the legislature in providing for compensation on eviction understood that the parties were in *status quo ante* and that there has been no break up of the lease interest.

It is no answer to this difficulty to say that under the ordinary law a tenant, that was, can be evicted from each and every portion of the leased property. If that can be done, except in cases of holding over, it would be by regarding him as a trespasser who had no right to remain on the soil after the efflux of time limited by his lease. I am prepared to concede that the Act we are construing does not in terms prohibit partial eviction. But that is only the negative side of the enactment. Has it not by implication asked the Courts to pass a decree in ejectment preparatory to the award of compensation on the basis of an existing tenancy? That is my reading of the Act, and I therefore regret I am unable to agree with the conclusion to which the learned Chief Justice and my learned brothers have come.

I have been reading a great deal about the genesis of the Act. The report of the Malabar Land Tenures Committee shows that the present law is a compromise between the creation of occupancy rights in the soil in favour of all tenants in the same way that the Estates Land Act has done and the endeavour to purchase the landlord out altogether. I do not propose to quote any extracts from the report; but I cannot help remarking that it is a sad commentary on their labours that the law which they recommended should have been so inaptly worded as to enable the landlord to evict the tenant piecemeal. The danger which threatens the tenant is not an imaginary one. I suggested some cases in the course of the hearing. A tenant erecting a house in a portion of the paramba or digging a tank in one of

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the demised premises to irrigate the lands demised are instances in which partial eviction would place the tenant very badly at the mercy of the landlord. When we remember the practice of granting melcharths which prevails in Malabar, it would occur at once that a karnavan can by threatening to evict the tenant from a portion of the holding exact unconscionable terms prior to renewal. In the case of ordinary owners of property such a procedure would not be frequently adopted. But the Malabar jammi of to-day is in a transition stage. Education and notions of independence have destroyed his benevolent despotism. He is a watched man and he therefore does not hesitate to make the most of his opportunities. Melcharths and the demand of a heavy renewal fee for which he is seldom held accountable to the flock under him are his resorts to enrich his wife and children. There may be still a few old-fashioned jammis who wish well by the tarwad and its property; but their numbers are diminishing. The tie of natural kinship rebels against the enforcible claims of the corporate body; and the result is that, in the majority of cases, the karnavan is trying to exact as much as possible from the tenants. Our decision would place a new weapon in his hands and the lot of the tenant would become more difficult than ever.

I hope I may be excused this digression into the question of the relationship between the tarwad and its members because I am anxious to impress on the legislature the necessity of so amending the law as to make the lot of the Malabar tenant more tolerable than it would be under our decision. I feel compelled to differ from the majority of the Court, and to hold that until the payment of compensation in respect of the holding as a whole there can be no partial eviction.

K.R.