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section 92 occurred in section 539 and that the latter paragraph makes a difference. We find, however, that *Ramayyangar* v. *Krishnayyangar*(1), has been followed in some very recent cases of this Court decided under the new Code. One of them is a decision of OLDFIELD and BAKEWELL, JJ., in Appeals Nos. 310 and 373 of 1918 and the other is the judgment of SPENCER and KRISHNAN, JJ., in *Ambalavana Pandara Sannadhigal* v. *The Advocate-General of Madras*(2), On the other hand, there is a ruling of the Bombay High Court in *Darves Haji Mahamad* v. *Jainudin*(3), contrary to the view taken in these cases. And the Allahabad High Court seems to have taken the same view of the law as the Bombay High Court. But the matter being purely one of procedure we think we ought to follow the rulings of this Court. The judgment of the Subordinate Judge is set aside and the case will be remanded to him for disposal on the merits, the memorandum of objections being allowed.

K.R.

APPELLATE CIVIL.

1920, February 12.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

KALATHY AMMALU AMMA AND THREE OTHERS, LEGAL REPRESENTATIVES OF THE DECEASED APPELLANT (SECOND DEFENDANT),

v.

KOLLANGARTH RAMAN NAIR AND NINE OTHERS (PLAINTIFFS NOS. 1 TO 4, DEFENDANTS NOS. 10 TO 14 AND LEGAL REPRESENTATIVES OF THE DECEASED FIFTEENTH DEFENDANT), RESPONDENTS.*

Malabar Compensation for Tenants' Improvements Act (I of 1887), Sec. 19—Compensation for tenants' improvements—Contracts made after Act, more favourable to tenant than the Act—Contract, or Act enforceable—Value whether at the time of eviction, a date of contract, payable.

Section 19 of the Malabar Compensation for Tenants' Improvements Act, does not prevent the tenant from claiming compensation under a contract made after passing of the Act, if it is more favourable to him than the Act.

The value of improvements payable to a tenant is their value at the time of eviction.

Kerala Varmah Valia Rajah v. *Ramunni*, (1893) 3 M.L.J., 51 (F.B.), followed.

(1) (1887) I.L.R., 10 Mad., 185. (2) (1920) I.L.R., 43 Mad., 707.
(3) (1906) I L.R., 30 Bom., 603.
* Second Appeal No. 104 of 1919.

AMMALU AMMA v. RAMAN NAIR.

SECOND appeal against the decree of V. S. NARAYANA AYYAR, Temporary Subordinate Judge of Tellicherry, in Appeal Suit No. 63 of 1918, preferred against the decree of T. KRISHNAN NAYAR, District Munsif of Nadapuram, in Original Suit No. 474 of 1915.

The plaintiffs sued to recover the plaint properties from the defendants on the strength of a marupat executed by one Kunhali to one Krishna Variar, who was then the pattamali of the plaint devaswam. The only contention in Second Appeal was as to the amount of compensation payable to the defendants. The marupat (Exhibit A) was executed on 5th November 1886, after the Malabar Compensation for Tenants Improvements Act was passed, and was in these terms:

"Marupat executed by Kunhali to Krishna Variar, etc.:—The following properties have been demised as kanam and kuzhikanam and a sum of rupees twenty received in cash for the necessities of the devaswam. The sum of money is charged as kanam on the said parambas and a demise granted for 24 years. Therefore, if I reclaim and improve these parambas and make kuzhikanams (trees) therein, I shall receive the value thereof at double the local rate and also vettukanam equal to that kuzhikanam amount, and if I make houses and wells, the value estimated therefor on inspection, along with the said kanam amount . . .

5th November 1886 (Signed) Kunhali."

The lower appellate Court allowed compensation for improvements at the rate current at the date of Exhibit A, according to the Malabar Compensation for Tenants' Improvements Act and not according to the terms of the contract, Exhibit A. The second defendant preferred this Second Appeal.

K. P. M. Menon for the appellant.

K. P. Padmanabha Pillai for first to fourth respondents.

P. V. Parameswara Ayyar for sixth to ninth respondents.

The JUDGMENT of the Court was delivered by

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—The questions for consideration are:

(1) Whether second defendant is entitled to contract himself out of the Malabar Tenants Improvements Act where the terms of the contract are more favourable to him than the provisions of the Act relating to improvements.

(2) Whether the calculation of the value of improvements according to Desa Maryada (usage of the land) mentioned in

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the contract should be made at the rate prevailing on the date of Exhibit A or at the time of ejectment.

(3) What is the amount claimable for improvements according to the contract? Is it (*a*) twice the value of kuzhikanam improvement *plus* twice that amount again for vettukanam or (*b*) twice the kuzhikanam amount *plus* twice the vettukanam amount or (*c*) twice the value of kuzhikanam *plus* the value of the kuzhikanam for vettukanam (that is thrice on the whole).

We think that section 19 of the Act does not prevent the tenant from claiming under a contract made even after the passing of the Act, if it is more favourable to him than the Act. The general words in the short judgment in *Randupurayil Kunhisore* v. *Neroth Kunhi Kannan*(1) that "section 19 precludes parties from contracting themselves out of the Act by any contract made after 1st January 1886" do not, when taken with the facts of that case, and having regard to the language of section 19, prevent the tenant from claiming according to the contract if it is more favourable. The section says only that "nothing in any contract made after the first day of January 1886, shall take away or limit the right of a tenant to make improvements and to claim compensation" according to the Act, and not that nothing in any contract made after the first day of January 1886, shall oblige the landlord to pay more compensation than is claimable under the Act, nor does it say conversely that nothing in such a contract shall entitle the tenant to claim more compensation than is claimable under the Act.

On the second question, we are bound to follow the decision of the Full Bench in *Kerala Varmah Valia Rajah* v. *Ramunni*(2), and hold that the value at the time of eviction has to be considered.

On the third question, we think that twice the ordinary value for kuzhikanam and the same amount as the ordinary value of the kuzhikanam for vettukanam, total, thrice the amount of kuzhikanam is claimable for both kuzhikanam and vettukanam taken together. In the result, the compensation payable to second defendant for kuzhikanam and vettukanam is

(1) (1909) I.L.R., 32 Mad., 1 (F.B.). (2) (1893) 3 M.L.J., 51 (F.B.)

not Rs. 1,663-15-7 but thrice Rs. 1,271-5-9 *plus* thrice Rs. 294-8-6. (This will not affect the amount given separately for chamayams.)

The lower Courts' decrees will be modified accordingly. Time for redemption extended till six months from this date. The appellant will get half his costs from plaintiffs here and in the lower appellate court. The appeal so far as it is directed against respondents Nos. 6 to 9 is dismissed with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

ARUMUGAM PILLAI, APPELLANT (PETITIONER)

v.

KRISHNASAMI NAIDU AND FIVE OTHERS RESPONDENTS (RESPONDENTS)*

1920, March 16.

Execution—Pre-decree arrangement that decree should be inexecutable in part, whether recognizable in execution proceedings.

An arrangement made prior to decree in a suit that the decree that might be passed should be inexecutable in part is one that cannot be enforced in execution; hence a sale held in execution of such a decree in spite of the arrangement is good.

Chidambaram Chettiar v. *Krishna Vathiyar*, (1917), I.L.R., 40 Mad., 233 (F.B.) distinguished.

APPEAL against the Order of F. A. COLERIDGE, in Appeal No. 106 of 1917, on the file of the District Court of Madura preferred against the Order, of M. R. SANKARA AYYAR, District Munsif of Dindigul, in Execution Application No. 801 of 1916, in Execution Petition No. 860 of 1915, in Original Suit No. 255 of 1912.

This appeal arose under the following circumstances :—One Palaniyappa Chetti, who is the second respondent herein, and who held the first and third mortgages on a certain property, filed Original Suit No. 255 of 1912 for the recovery of the mortgage amount due on his first mortgage against the mortgagors and the third defendant, who was the second mortgagee of the same properties. The third defendant is the third respondent in this

* Appeal against Appellate Order No. 31 of 1918 and Civil Revision Petition No. 629 of 1918.