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lost to a transferee, the reversioner cannot maintain an action for the preservation of the property, on the same principle that actions to retain waste are allowed (see Mayne's Hindu Law, paragraph 647, and cases cited therein (especially *Nobin Chunder Chuckerbutty* v. *Guru Pershad Doss*(1) per Sir BARNES PEACOCK).

I am therefore of opinion that article 134 applies to the one-fifth share of the house and of the land mortgaged in 1866.

The result is the whole Second Appeal fails and is dismissed with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer, and Mr. Justice Ramesam.

1921, February 28.

SANKARAN NAMBUDRIPAD (PETITIONER), APPELLANT,

v.

SANKARAN NAIR AND OTHERS (APPELLANTS), RESPONDENTS.*

Malabar Compensation for Tenants Improvements Act (I of 1900), *ss.* 5 *and* 6 (3),—*Decree for ejectment—Value of improvements, ascertained and specified in the decree—Improvements effected subsequent to decree, not ascertained—Application for execution by ejectment, whether maintainable.*

Where a landlord in Malabar obtained a decree for ejectment of his tenant on payment by him of an ascertained amount for compensation for value of improvements, applied for execution of the decree by ejectment of the tenant after depositing into Court the amount specified in the decree for value of improvements, *held*, that the landlord was entitled to an order in execution for ejectment of the tenant from all the lands specified in the decree, even though the value of improvements, effected by the tenant on some of the lands, *subsequent to the decree*, had not been ascertained under section 6 (3) of the Malabar Compensation for Tenants Improvements Act.

APPEAL against the order of G. H. B. JACKSON, District Judge of South Malabar, in Appeal Suit No. 524 of 1917, preferred against the order of C. R. VENKATESWARA AYYAR, District Munsif of Manjeri, in Execution Petition No. 1375 of 1917 (in Original Suit No. 420 of 1912).

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(1) (1868) B.L.R. Sup. Vol., 1008 (F.B.) at pp. 1013, 1014.

* Civil Miscellaneous Second Appeal No. 27 of 1918.

This Civil Miscellaneous Second Appeal arises out of an order passed in execution of a decree, dated 28th March 1914, in a suit instituted by the appellant to redeem a kanom. The decree in favour of the plaintiff in the original suit was one for redemption; the value of improvements effected by the tenant on the lands till the date of the decree was ascertained and specified in the decree, and the said amount and the amount of kanom was directed to be paid by the plaintiff prior to his obtaining possession of the lands from the defendants. The material portion of the decree was as follows:

"That upon the plaintiff depositing into Court within six months from this date the said kanom and value of improvements amounting in all to Rs. 13,149–8–9 to the credit of the persons mentioned above . . . the defendants do deliver up to the plaintiff . . . all documents in their possession or power, etc., and do retransfer the mortgaged property free from encumbrances, etc., and do put the plaintiff into possession of the said mortgaged property."

The plaintiff (decree-holder) deposited the said amount into the Court of the District Munsif and applied for execution of the decree by ejectment of the defendants from the lands specified in the decree. The decree-holder prayed, in the alternative, that

"if a Commissioner is appointed on the objection of the defendants that any Kuzhikar chamayams have been effected subsequent to the decree in the Kudiyiruppus (occupied parambas), hills, etc., it may be directed that such lands may be retained and that after retaining these, the nilams, etc., on which no such improvements were made subsequent to the decree may be immediately delivered to him."

The defendants contend that no order of ejectment could be made until the value of improvements effected by them subsequent to the decree on any of the lands included in the decree was ascertained and the entire amount of compensation due to them had been deposited by the plaintiff into Court, under the provisions of section 6 (3) of the Malabar Compensation for Tenants Improvements Act (I of 1900). The District Munsif overruled this contention and directed the ejectment of the tenants from lands other than those on which the defendants claimed to have effected improvements subsequent to the

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decree. The defendants preferred an Appeal to the District Judge, who reversed the order of the District Munsif, holding that the defendants were entitled under the Act to remain in possession of all the lands until compensation due for improvement in any portion of them was ascertained and paid to them. The plaintiff preferred this Civil Miscellaneous Second Appeal.

C. V. Anantakrishna Ayyar and *T. Eroman Unni* for appellant.

C. Madhava Nayar and *K. Kuttikrishna Menon* for respondent.

SPENCER, J.

SPENCER, J.—In this case the appellant obtained a decree for ejectment of a tenant in South Malabar and, after depositing the amount ascertained as due to the tenant for improvements under the Malabar Improvements Compensation Act, applied before the District Munsif for execution of his decree by ejectment of the tenant from all the lands mentioned in the decree, or in the alternative he added that if the tenants claimed that any improvements had been effected subsequent to the decree in kudiyiruppus, parambas and hills, execution might be granted of the other properties, that is, nilams (double crop lands), palliyals (single crop lands) and nattupoyils (seed-beds).

As observed by the District Munsif, this application for partial delivery was intended to be for the benefit of the tenants and to avoid further demands for compensation owing to delay in execution. The District Munsif granted the appellant's prayer and ordered delivery of the nilams, palliyals and seed beds, and directed that execution in regard to other items should wait. He also directed that the tenant should give security for any relief that might be obtained against him in execution before he took the amount deposited for the value of improvements.

The District Judge held that partial ejectment, before compensation was finally settled upon the other lands which were left in possession of the tenant, was contrary to the provisions of section 5 of the Malabar Tenants Improvements Act, and he therefore allowed the Appeal and directed the District Munsif not to grant the petitioner's prayer till he finally determined the question of valuation.

Section 5 of Madras Act I of 1900 provides that any tenant to whom compensation is due shall be entitled to remain in possession until ejectment in execution of a decree or order of Court. The section does not make the payment of the compensation a condition precedent to ejectment. Section 6 (b) contemplates re-valuation being calculated on the condition at the time of ejectment and provides that the decree shall be varied in accordance with such order of the Court executing the decree. It does not provide that ejectment shall be stayed until re-valuation is made.

There is an observation in *Chowakkaran Keloth* v. *Karuvalote Parkum*(1), that a tenant retains in Malabar his status as a tenant until the improvements are paid for; but in *Mayankutti* v. *Kunhanmad*(2), SADASIVA AYYAR, J., doubted the correctness of the statement, and I respectfully consider that it is not warranted by the language of the section. There is no provision in section 5 or in section 6 to the effect that until compensation is paid, no ejectment should be ordered. In the Full Bench, *Kannyan Baduvan* v. *Alikutti*(3), SESHAGIRI AYYAR, J., held that partial ejectment was not contemplated under the Act in any circumstances, but the majority of the Full Bench held that a lessor was not entitled to eject a tenant in Malabar from a portion of his holding while an assignee of the reversion could do so on payment of the value of improvements to that part.

The District Judge was not correct in his opinion that ejectment of a tenant could only be ordered after the final determination of the value of improvements. If that was the state of the law it would be possible for a tenant to postpone eviction perpetually by continually making fresh improvements while the enquiry into the last application for re-valuation was going on.

The appellant's (the execution-petitioner's) application for execution of the whole decree was not open to any objection, even though a petition for re-valuation might be pending, and the order actually passed by the District Munsif was, as already

(1) (1915) 29 I.C., 559 at page 560. (2) (1918) I.L.R., 41 Mad., 641, 644.
(3) (1919) I.L.R., 42 Mad., 603 (F.B.).

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observed, a concession to the tenants whose consent was assumed to a course which would naturally be preferred to immediate eviction from the entire holding. The District Munsif's order requiring security to be given for any relief that might arise in the execution of the decree was not reasonable and must be set aside.

In the result the Appeal must be allowed, and the District Munsif's order will be restored with costs here and in the Lower Appellate Court.

RAMESAM, J.

RAMESAM, J.—I will only add that, even if a plaintiff decree-holder who obtained a decree under the Act is not entitled to eject the defendant until he pays the sum mentioned in the decree for improvements, it does not follow that, when he pays the amount so mentioned to the defendant or (when he refused to take it) into Court, the mere fact that the defendant is asking for the further valuation mentioned in section 6 (3) operates as a stay of execution of the decree for ejectment or that an order for ejectment should not be made until the supplemental enquiry contemplated in section 6 (3) is made. None of the cases cited by the learned Counsel for respondents, *Kannyan Baduvan* v. *Alikutti*(1), *Paramesara Ayyan* v. *Kittunni Valia Mannadiar*(2), *Abdulla Koya* v. *Kallumpurath Kanaran*(3), *Kunhikutti Haji* v. *Gower*(4), support such a proposition. I agree with my learned brother in doubting the correctness of *Chowakkaran Keloth* v *Karuvolote Parkum*(5). I agree with the order proposed by him.

K.R.

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(1) (1919) I.L.R., 42 Mad., 603 (F.B.). (2) (1917) 33 M.L.J., 591.
(3) (1917) 33 M.L.J., 463. (4) (1913) 24 M.L.J., 472.
(5) (1915) 29 I.C., 559 at page 560.