

APPELLATE CIVIL.

Before Mr. Justice Jackson.

ERCHAMVEETTIL PARKUM KOTTAYI CHATHUKUTTY,
(PLAINTIFF), APPELLANT,

1927,
February 8.

v.

CHANGANATHA PARKUM THOTTATHIL KUNHAPPU
AND ANOTHER (DEFENDANTS), RESPONDENTS.*

The Malabar Compensation for Tenants' Improvements Act
(Madras Act I of 1900)—Sec. 3 "Improvements"—
Whether Act applies to non-agricultural holdings.

Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1900) applies only to improvements effected in agricultural holdings and vacant building sites. Hence if a shop in an urban area is let to a tenant who agrees by his lease to remove at the end of the term a bakery oven erected by him thereon, he is not entitled to any compensation for the oven at the time of eviction.

SECOND APPEAL against the decree of V. P. Row, District Judge of North Malabar, in Appeal Suit No. 270 of 1922, preferred against the decree of S. GOPALA AYYAR, District Munsif of Nadapuram, in Original Suit No. 1190 of 1920.

In this case the plaintiff let to the defendant a shop in a town in Malabar for 5 years, the tenant agreeing to remove a bakery oven erected by him thereon, when surrendering the shop at the end of 5 years. At the end of 5 years the plaintiff sued to recover arrears of rent and the land. The defendant pleaded, *inter alia*, that he should be paid compensation for the oven. The District Munsif allowed the suit declining to grant

* Second Appeal No. 963 of 1924.

CHATHU-
KUTTY
v.
KUNHAPPU.

any compensation. On appeal the District Judge allowed compensation. Hence this second appeal by the plaintiff.

K. V. Madhavan Nayar, A. V. K. Krishna Menon and K. Kuttikrishna Menon for appellant.

A. K. Balakrishnan for first respondent.

JUDGMENT.

The short point for determination in this appeal is whether the tenant of a shop in Malabar comes within the purview of Act I of 1900 Madras. Curiously enough, the question appears to be *res integra*. Although it must have been decided times without number in the lower Courts, nevertheless, there is no ruling of this Court in the matter. In section 3, 'tenant' is defined as including a person who is lessee of land. 'Holding' in sub-section (3) of section 3 has no larger connotation than is implied by the language of sub-section (1). Improvements are set forth in section 4 and there is nothing in that list which could include the improvement of urban dwellings. I think it is entirely foreign to the intention of the Act to hold that because a house or a shop must necessarily stand upon land, therefore, whenever a house or a shop is leased the tenant is lessee of land within the meaning of the Act; and if there happen to be some small yard appurtenant to the shop that would make no difference. I think it has invariably been held in Malabar that the Act applies to agricultural holdings and also to what are known as Kudiyiruppu or vacant sites available for buildings and does not apply to sites which are already mainly occupied by houses or shops. It follows therefore that the respondent in this appeal can derive no benefit from the provisions of the Act and he must be held to the terms of his contract, Exhibit C, by which he has undertaken to remove the oven—I do not

know why the translator of this Court should call it a bread safe—at the expiry of his lease. The appeal is accordingly allowed and the decree of the District Munsif is restored with costs throughout.

CHATHU-
KUTTY
v.
KUNHAPPU.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Curgenven.

W. ELLIOT, OFFICIAL RECEIVER, CUDDAPAH
(PETITIONER), APPELLANT,

1927,
April 12.

v.

MOPPARAPU SUBBIAH (RESPONDENT), RESPONDENT.*

Provincial Insolvency Act (V of 1920), ss. 53 and 75 (3)—Appeal filed without leave—Petition for leave after filing of appeal, validity of appeal—Debtor in insolvent circumstances transferring all his movable and immovable properties to trustee for distribution among his creditors—Trustee, whether a purchaser in good faith and for valuable consideration—Indian Trusts Act (II of 1882), ss. 4, 5 and 6.

In cases of appeals under section 75 (3) of the Provincial Insolvency Act (V of 1920) it is not necessary that leave to file the appeal should be obtained before filing the appeal; it may be obtained after. *Anantanarayana Ayyar v. Sankaranarayana Ayyar*, (1924), I.L.R., 47 Mad., 673, followed.

A deed of trust by a person of his properties for payment of his debts is not valid unless it is an actual transfer of his properties and otherwise conforms to the provisions of sections 4, 5 and 6 of the Indian Trusts Act.

If the intention to transfer both movables and immovables by means of a deed is one and indivisible and if the transfer of the immovables is invalid for some reason, e.g., non-registration of the deed, the transfer of the movables too cannot take effect.

A trader who could not pay his debts in the ordinary course and who was in financial difficulties transferred to a

* Appeal against Order No. 482 of 1925.