APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Horwill.

S. H. BADSHA SAHIB & Co. (THIRTY-SIXTH DEFENDANT), APPELLANT,

1937, October 6.

v.

THALIYIL VEETAIH LAKSHMI KUTTY KOVILAMMA AND NINETEEN OTHERS (PLAINTIFFS 1 TO 4 AND DEFENDANTS 1 TO 12, 42 AND NIL), RESPONDENTS.*

Malabar Compensation for Tenants Improvements Act, Madras (I of 1900)—Tenant of buildings—Benefit of the Act, if extended to.

In a suit by a lessor against a lessee of a shop for the recovery of the same and for arrears of rent, the latter put forward a claim under the Malabar Compensation for Tenants Improvements Act (I of 1900) for improvements alleged to have been effected by him.

Held that the benefit conferred upon tenants by the Act cannot be extended to tenants of buildings.

Chathukutty v. *Kunhappu*(1), approved.

Paredath Chori George v. *Thithi Umma*(2), *Avaru* v. *Asi Bai*(3) and *Pathumma Umma* v. *A. Mohideen*(4) considered.

APPEAL against the decree of the Court of the Subordinate Judge of South Malabar at Calicut in Original Suit No. 35 of 1932.

K. Kuttikrishna Menon for *C. Unnikanda Menon* and *K. Kunhikrishnan Nair* for appellant.

P. Govinda Menon and *T. N. Ravivarman Tirumalpad* for respondents one to four.

Other respondents were unrepresented.

The JUDGMENT of the Court was delivered by VENKATASUBBA RAO J.—There was a mortgage VENKATASUBBA RAO J.

*Appeal No. 367 of 1933.

(1) (1927) I.L.R. 50 Mad. 813.
(2) (1930) 60 M.L.J. 214.
(3) (1931) I.L.R. 55 Mad. 151.
(4) A.I.R. 1928 Mad. 929.

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granted on 1st July 1923 by the first defendant and his deceased brother in favour of plaintiffs 1 to 3 and another, which comprised twenty-seven items. The transaction, we understand, was one of simple mortgage in respect of twenty-three out of them, and, in regard to the remaining four items, what was created was a usufructuary mortgage which was to subsist for nine years. On the same date the aforesaid four items were taken back by the mortgagors on lease for a period of five years. This suit has been brought to recover the items comprised in the lease with arrears of rent. The appellant before us is the thirty-sixth defendant, claiming under an alleged lease from the mortgagors, who complains that the lower Court has wrongly disallowed his claim to improvements.

Turning first to the pleadings, it is noticeable that in the written statement filed by the appellant no such claim was made. There it is stated that he lent large sums to the mortgagors, who further caused him to expend monies for improving or altering the property, that it was found upon a settlement with them, that Rs. 3,000 was due to him and that provision was made for its repayment in the rental agreement executed by the first defendant in his favour on 16th May 1931. Then he goes on to describe how by means of some kind of adjustment spread over six years, the period of the lease, the full amount was to be paid back to him. It is impossible to read into this written statement a claim for improvements.

Then, at the trial no serious attempt seems to have been made to adduce evidence on the question of improvements. Indeed, it has not

even been proved that the thirty-sixth defendant was a lessee for six years or that he was in possession even previous to the date of the mortgage as suggested. Neither the original lease deed nor the rental agreement of 1931 was produced or filed. Apart from these matters, there is an objection which in our opinion is fatal to his claim. In the written statement it is alleged (there is no reason why he should not be held bound by his own admission) that the lease was in respect of a shop and not, as now suggested, a shop and a paramba.

On the footing then that what was leased to the thirty-sixth defendant was a shop pure and simple, the question arises whether he can claim the benefit conferred upon tenants by The Malabar Compensation for Tenants Improvements Act (I of 1900). The word "tenant" is defined as including a person, who, as lessee, etc., "of land is in possession thereof". Here is a clear indication that the Legislature did not intend that buildings or houses or shops should come within the purview of the Act, and the argument is fanciful that, because a building must necessarily stand upon land, therefore, it comes within the scope of the Act. The expression in the Act must receive its natural meaning and we are not prepared to hold that the benefit conferred by it extends to tenants of buildings. In *Chathukutty* v. *Kunhappu*(1), a judgment of JACKSON J., this view has been taken, and with that we respectfully agree. It was held that, whereas the Act applies to agricultural holdings and kudiyiruppus (vacant sites available for buildings), it does not apply to houses or shops. In subsequent decisions this

(1) (1927) I.L.R. 50 Mad. 813.

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case has been referred to,' but never dissented from. In *Pathumma Umma* v. *A. Mohideen*(1) the facts are these. What was "entrusted" to the defendants was a hut, but the new house which they built covered a considerably larger area than the site of the hut. REILLY J. held that, even if the defendants were tenants of the hut, they were not tenants of the area outside the site of the hut, and from this, it followed that the new house did not constitute a tenant's improvement. But SRINIVASA AYYANGAR J. bases his decision expressly on the ground, following the case just cited, that the lease was of a building. The suggestion that REILY J. in this case casts a doubt on the correctness of *Chathukutty* v. *Kunhappu*(2) is not well-founded. Nor had it been called in question in either of the two later decisions, *Paredath Chori George* v. *Thithi Umma*(3) or *Avaru* v. *Asi Bai*(4), to which our attention has been called, although in the former case there are observations to the effect that it was unnecessary to express any opinion on the question whether the Act applies to leases of buildings or shops. Now turning to the actual decisions in these two cases: in *Paredath Chori George* v. *Thithi Umma*(3) "what was let was a compound or paramba or kudiyiruppu" (see page 216) and it was held that the lessee was entitled to compensation in respect of the house which he constructed on the vacant site; in *Avaru* v. *Asi Bai*(4) "the appellant obtained the property, which was a vacant site, on lease for erecting a house for residential purposes" (page 252) and he

(1) A.I.R. 1928 Mad. 929.
(2) (1927) I.L.R. 50 Mad. 813.
(3) (1930) 60 M.L.J. 214.
(4) (1931) I.L.R. 55 Mad. 151.

was held entitled to the value of the house which he built. The present case differs from them and resembles *Chathukutty* v. *Kunhappu*(1) where, as here, the lease was of a building, which case, we may note, has been followed without discussion by a Bench of this Court (WALLACE and TIRUVENKATACHARIAR JJ.) in Letters Patent Appeals Nos. 17 to 22 of 1925. This lends support to our view of the section.

In the result, the appeal fails and is dismissed with costs.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Venkataramana Rao.

[ON A DIFFERENCE OF OPINION BETWEEN BURN AND ABDUR RAHMAN JJ.]

SUNDARARAJULU NAIDU AND TWO OTHERS (DEFENDANTS 5 TO 7), APPELLANTS,

v.

B. PAPIAH NAIDU (PLAINTIFF), RESPONDENT.*

1938, February 4.

Grant—Crown—Heritable grant providing for a succession of limited interests, each grantee taking the estate for life—Competency of Crown to make—Crown Grants Act (XV of 1895)—Applicability and effect of—Grant by East India Company, if and when amounts to such heritable grant—Construction of grant—Heir of grantee—Execution of money decree against—Sale in—Sale of corpus of property granted—Sale of judgment-debtor's right to enjoy rents and profits of property for his life—Permissibility—Receiver—Appointment of, to work out rights of decree-holder—Proper order, if and when.

By a deed of grant dated 31st August 1802 a village was granted on shrotriem tenure to a poligar by Lord Clive on

(1) (1927) I.L.R. 50 Mad. 813.

* Appeals Against Orders Nos. 101 of 1935 and 220 of 1936.