APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Somayya.

1939, February 21.

VIYATHEN SREEDEVI *alias* KOZHIKKOTE KISHAKKE KOVILAGATH VALIA THAMBURATTI (SECOND APPELLANT), APPELLANT,

v.

AYDROSS KURIKKAL AND ANOTHER (RESPONDENTS), RESPONDENTS.*

Malabar Compensation for Tenants' Improvements Act (I of 1900), ss. 10 and 19—Trees spontaneously grown during tenancy—Felling by tenant of—Full compensation to landlord for—Payment of—Agreement between landlord and tenant as to—Precluded by Act, if—Felling not an improvement to the estate—Waste committed by tenant—Landlord's right to compensation for—Effect of Act upon.

A kanam demise of certain lands in Malabar executed in 1923 provided that if the tenant cut trees, such as teak, etc., from the lands without obtaining the written consent of the landlord, he should be answerable for the costs of such trees and should surrender the property irrespective of the twelve years' term if the landlord demanded it. The landlord sued to recover from the tenant a sum representing a claim for damages for the wrongful felling of a number of teak trees growing on the property. The twelve years' period had expired, but the tenant was still in possession of the property. It was either admitted or found that the said trees had not been sown by the tenant but had grown spontaneously, that the tenant had cut down the trees for the purpose of selling the timber for his own benefit and had sold it for his own benefit and that the landlord's claim for compensation did not exceed the value of the trees as timber.

Held: The Malabar Compensation for Tenants' Improvements Act, 1899, does not preclude a landlord and a tenant from agreeing that the tenant shall pay full compensation

* Letters Patent Appeal No. 13 of 1937.

SREEDEVI v. KURIKKAL.

when he fells trees spontaneously grown during the tenancy and the felling does not constitute an improvement to the estate and the landlord was therefore entitled to recover from the tenant the full value of the timber felled by him.

The landlord's right to compensation for waste committed by the tenant is left unaffected by the Malabar Compensation for Tenants' Improvements Act. Even if, in the present case, the tenant had not sold the timber his action in felling the trees would still be waste as it did not lead to an improvement to the estate.

Scope and effect of section 19 of the Act explained.

Raja of Cochin v. *Kittunni Nair*(1) explained and distinguished.

Kelu Nair v. *Valia Thamburatti*(2) relied upon.

APPEAL under Clause 15 of the Letters Patent from the judgment of VENKATARAMANA RAO J., dated 20th November 1936 and passed in Second Appeal No. 1853 of 1931 preferred to the High Court against the decree of the Court of the Subordinate Judge of South Malabar at Calicut in Appeal Suit No. 200 of 1930 preferred against the decree in Original Suit No. 316 of 1929, District Munsif's Court, Manjeri.

K. P. Ramakrishna Ayyar for appellant.

N. R. Sesha Ayyar for respondents.

JUDGMENT.

LEACH C.J.

LEACH C.J.—The appellant was the plaintiff in the suit out of which this appeal arises. She is the owner of certain lands in Malabar and in 1923 executed a kanom demise of the lands in favour of the respondent, who executed a counter-part (kychit). The demise, which was a renewal of an earlier demise, was for the usual period of twelve years. Although this period has expired, the respondent is still in possession of the property. The suit was filed by the appellant to

(1) (1916) I.L.R. 40 Mad. 603 (F.B.). (2) (1922) 16 L.W. 310.

recover a sum of Rs. 643 from the respondent. Of this amount Rs. 37–7–7 was claimed on the ground that the appellant had been compelled to pay to Government the land revenue owing to default by the respondent. The demise provided that the land revenue should be paid by the tenant. The balance of the claim, Rs. 605–8–5, represented a claim for damages for the wrongful felling of twenty-five teak trees growing on the property. It is common ground that the trees had not been sown by the tenant, but had grown spontaneously. It is also common ground that the appellant's claim for compensation did not exceed the value of the trees as timber. The kanom demise contained the following clause :

"If I cut trees such as veeti, teak, jack, etc., from the parambas without obtaining the written consent of the kovilagam, I shall be answerable for the costs of such trees and shall surrender the properties irrespective of the twelve years' term if the kovilagam demands it."

The appellant contended that by virtue of this clause she was entitled to recover the full value of the trees, there being nothing in the Malabar Compensation for Tenants' Improvements Act, 1899, to deprive her of this right.

The case was tried by the District Munsif of Manjeri, who found that the respondent had not defaulted in the payment of land revenue and dismissed the suit so far as this claim was concerned. He held that the appellant was entitled to compensation for the trees which the respondent had cut down, but limited the amount to Rs. 37–8–0, which represents eight annas per tree. The appellant accepted the decision of the District Munsif so far as it concerned the claim in respect of the money paid to Government, but appealed to the Subordinate Judge of Calicut against the finding of the District Munsif that she was only entitled

SREEDEVI
v.
KURIKKAL.

LEACH C.J.

to compensation at the rate of eight annas per tree. While holding that the appellant was entitled to an amount of compensation larger than that awarded by the District Munsif, the Subordinate Judge refused to accept the contention that she was entitled to the full value of the trees. He held that the appellant was entitled to Rs. 187–8–0 being a quarter of the amount claimed. In arriving at this decision the Subordinate Judge apparently had regard to the provisions of section 10 of the Malabar Compensation for Tenants' Improvements Act. The appellant then appealed to this Court. The appeal was heard by VENKATARAMANA RAO J., who refused to interfere with the decree of the Subordinate Court. The learned Judge considered that the provisions in the kanom demise for the payment of the full value of the trees was penal and contrary to section 19 of the Act. In his opinion the appellant was only entitled to "reasonable" compensation and the amount awarded by the Subordinate Judge was reasonable.

The question which falls for decision is whether the Act precludes a landlord and a tenant from agreeing that the tenant shall pay full compensation when he fells trees spontaneously grown during the tenancy and the felling does not constitute an improvement to the estate. The scheme of the Act is to provide for compensation being paid to a tenant for improvement when he is required to quit the land held by him. The main sections relating to the payment of compensation are sections 9, 10, 13 and 19. Section 9 relates to an improvement producing an increase in the value of the annual net produce. When the improvement is not an improvement to which section 13 applies and has caused an increase in the value of the annual net produce of the holding, the Court shall

determine, as nearly as may be, the average net money value of the increase and the number of years during which the increase may reasonably be expected to continue, and shall then ascertain the present value "at six per cent of an annuity equal to such money value for such number of years" and shall also determine the cost of making the improvement. If the present value of the annuity does not exceed the cost of making the improvement, the present value shall be the compensation to be awarded. If the present value of the annuity exceeds the cost of making the improvement, the compensation to be awarded shall be the cost together with one-half of the excess. Section 10 deals with the case where the improvement is not an improvement within the meaning of section 9, but consists of timber trees or other useful trees or plants spontaneously grown during the period of the tenancy or sown or planted by the tenant, or any of the other persons mentioned in section 5. Where the improvement is of the nature contemplated by section 10, the compensation to be awarded shall be three-fourths of the sum which the trees or plants might reasonably be expected to realize, if sold by public auction to be cut and carried away. Therefore, under this section, if at the end of the tenancy there are trees which have spontaneously grown or been sown by the tenant, the tenant gets three-fourths of the value of such trees as timber and the landlord one-fourth. By virtue of section 13 when the improvement consists in the protection and maintenance of timber or fruit trees or of other useful trees or plants not sown or planted by the tenant or of such trees or plants spontaneously grown prior to the commencement of the tenancy, the compensation to be awarded shall be the proper cost of the protection and maintenance.

Section 19 says 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 for them in accordance with the provisions of the Act. As I have already indicated, the learned Judge, in holding that the appellant was not entitled to the full value of the timber felled by the respondent, relied on this section. I fail, however, to see how section 19 can apply to a case like the present one. The section merely prevents a tenant from entering into a contract which takes away or limits his right to make improvements and on the termination of the tenancy to claim compensation for them in accordance with the Act. When the tenant is required to quit, his landlord must pay him three-quarters of the value of the trees which have grown spontaneously, but that does not mean that the tenant is entitled to commit waste, and the respondent here committed waste. It was the appellant's case that the respondent had deliberately cut the timber for the purpose of selling it to a timber merchant. Before giving his decision VENKATARAMANA RAO J. called for a finding on the question whether the felling of the trees was in itself an act of improvement within the meaning of the Act. He also called for a finding whether the felling was for the purpose of building farm houses or making any other improvements. The Subordinate Judge recorded evidence and answered the questions in the negative. It was not necessary for him to hold that the respondent had cut down the trees for the purpose of selling the timber for his own benefit and he confined his findings to the wording of the issues framed by VENKATARAMANA RAO J. Before us thelearned Advocate for the respondent conceded that the trees were

felled and that the timber was sold by the respondent for his own benefit. He, however, contended that the respondent was entitled in law to do this. This argument cannot be maintained, as the landlord's right to compensation for waste committed by the tenant is left unaffected by the Act. Even if the respondent had not sold the timber, his action in felling the trees would still be waste as it did not lead to an improvement to the estate.

The learned Judge in the course of his judgment discussed at length the decision of this Court in *Raja of Cochin* v. *Kittunni Nair*(1). In that case the following question was referred to a Full Bench for decision :

> "Whether a provision in a Malabar lease that a tenant shall pay kuttikanom or some fee to his landlord in respect of trees cut down is contrary to the provisions of section 19 of the Malabar Compensation for Tenants' Improvements Act ?"

The Full Bench consisted of WALLIS C.J. and ABDUR RAHIM, OLDFIELD, SRINIVASA AYYANGAR and PHILLIPS JJ. They all answered the question in the negative. By kuttikanom is meant a customary fee of eight annas per tree or some such sum as may be agreed upon. It is common ground that the word "kuttikanom" only implies the payment of a small charge per tree felled. This case is, therefore, an authority for the proposition that section 19 of the Act does not prevent the parties from entering into an agreement by which the tenant shall pay a small fee in the event of trees being felled by him for the purpose of making an improvement. The judgment in *Raja of Cochin* v. *Kittunni Nair*(1) did not deal with the position where the felling is not for an improvement, but for the tenant's own purposes. VENKATARAMANA RAO J. considered that the Court dealt with the question on

(1) (1916) I.L.R. 40 Mad. 603 (F.B.).

SREEDEVI.
v.
KURIKKAL.

LEACH C.J.

the footing that the felling of trees was not an improvement, but this is not so. The Court was only concerned with the case of felling of trees for the purpose of improvement and deciding whether in such a case the landlord was entitled to be paid a small fee in respect of each tree felled notwithstanding the provisions of section 19. The judgment does not support the judgment now under appeal.

The right of a landlord and a tenant to agree upon the terms of the tenancy can only be limited by statute. The agreement entered into by the parties in this case does not run contrary to the Transfer of Property Act or the Contract Act, and, unless there is a provision in the Malabar Compensation for Tenants' Improvements Act which prevents the appellant from recovering from the respondent the full value of the timber felled by him, the appellant is entitled to succeed. There is clearly no such limitation in the Act and therefore I hold that the appellant is entitled to the full amount of the compensation claimed by her.

I am supported in my opinion by the judgment of RAMESAM J. in *Kelu Nair* v. *Valia Thamburatti*(1), a case in which the landlord was allowed the full amount claimed by him as compensation in respect of trees felled by the tenant. RAMESAM J. dealt with the case where the act of felling of trees was an act of improvement and the case where it was not. In the first case the imposition of a small kuttikanom fee would, he said, relying on the decision of the Full Bench in *Raja of Cochin* v. *Kittunni Nair*(2), not contravene the provisions of section 19; but if the fee imposed was the full value of the trees it would, he said, contravene the section. In a case falling in the second category there was nothing which contravened the provisions of

(1) (1922) 16 L.W. 310. (2) (1916) I.L.R. 40 Mad. 603 (F.B.).

section 19 in charging the full value. An examination of the record in the case decided by RAMESAM J. discloses the fact that the clause in the kanom demise there was of the same nature as the clause in this case.

Apart from there being no statutory prohibition of such a clause it is only right that a landlord should be allowed to make a stipulation for the payment of the full value when the felling is not an improvement within the meaning of the Act. If the trees were allowed to grow to maturity the landlord would be entitled to one-fourth of the value of the matured trees at the termination of the tenancy. The felling of trees before reaching maturity would clearly affect his pocket. The Court is only concerned here with the felling of trees spontaneously grown during the tenancy and my observations are limited to a case like the present one.

For the reasons indicated I would allow the appeal and grant a decree for the full value of the timber, namely Rs. 605–5–5, with costs here and below on this amount.

SOMAYYA J.—I agree.

A.S.V.