

APPELLATE CIVIL.

*Before Mr. Justice Wadsworth.*1935,
December 6.KONGOT PUTHEN VEETIL AMMU *alias*
DEVAKI AMMA (PETITIONER—FOURTH DEFENDANT),
APPELLANT,

v.

KONGOT PUTHEN VEETIL NAGAPPAN NAIR,
KARNAVAN, AND ANOTHER (RESPONDENT—DECREE-
HOLDER AND NIL), RESPONDENTS.**Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1900), sec. 6 (3)—Decree for eviction of tenant—Award for compensation for improvements embodied in—Date on which amount valued—Decree not stating anything as to—Effect—Re-valuation with reference to increment in value between date of valuation and date of eviction—Power of executing Court as to.*

Where a decree for eviction of a tenant entitled to compensation for improvements under Madras Act I of 1900 embodies an award for compensation for improvements and says nothing about the date on which the amount is valued, the amount awarded for the value of improvements in the decree must be taken to be the decision of the Court as to their value on that date. In such a case the executing Court is not at liberty to go behind the decree and ascertain from the evidence the date on which the valuation was actually made and allow a re-valuation with reference to any increment in value between the date of the valuation and the date of eviction.

Practice to the contrary in vogue in certain Courts in Malabar disapproved.

APPEAL against the appellate order of the Court of the District Judge of South Malabar dated 31st March 1931 and made in Appeal Suit No. 635 of 1930 preferred against the order of the Court of the Subordinate Judge of Ottapalam dated 29th

* Appeal Against Appellate Order No. 234 of 1931.

September 1930 and made in Execution Application No. 581 of 1929—Execution Petition No. 230 of 1929 (Original Suit No. 38 of 1925).

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K. Kuttikrishna Menon for appellant.

D. A. Krishnan Variar for respondents.

JUDGMENT.

This appeal arises out of orders in execution of a decree passed for eviction of a tenant in possession in Malabar, entitled to compensation for improvements under The Malabar Compensation for Tenants' Improvements Act, Madras Act I of 1900. The main question in the appeal is one of re-valuation with reference to clause 3 of section 6 of that Act. The suit was apparently pending for a number of years and the decree, which was passed in 1929, in fixing the amount of compensation due to the tenant accepted a valuation made by a commissioner in 1926. The tenant was evicted almost immediately after the decree, so that there is no question of any accretion in value between the date of the decree and the date of the eviction.

The argument for the appellant is that because section 6 (3) of the Act refers to the date up to which compensation for improvements has been adjudged in the decree, when no such date is given in the decree, the executing Court is at liberty to go behind the decree and ascertain from the evidence the date on which the valuation was actually made and allow a re-valuation with reference to any increment in value between the date of the valuation and the date of eviction. It is argued that this is the practice which is in vogue in certain Courts in Malabar and I am asked to give sanction to this practice, which to

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my mind strikes at the root of the principles upon which the decrees of a Court are executed. When a Court's decree for eviction embodies an award for compensation for improvements and says nothing about the date on which those amounts are valued, the natural inference is that the award concludes any claim between the parties on the date of the decree. The mere fact that section 6 (3) of the Act provides for re-valuation does not give to the judgment-debtor a right to go behind the decree and by looking into the evidence to find out when the crop was last valued and re-open the whole matter by having a further valuation made immediately after the decree has been passed. It is of course open to a Court in passing its decree to say that the value of improvements on such and such a date is so much and that any increment in value may be worked out in execution by a re-valuation. But, in the absence of any such provision, the amount awarded for the value of improvements in the decree must be taken to be the decision of the Court as to their value on that date.

[Portion of the judgment omitted as not being necessary for this report.]

In the result the appeal is dismissed with costs.

A.S.V.
