

Kerala High Court

Cherian Mathai And Ors. vs Narayana Pillai And Ors. on 18 October, 1960

Equivalent citations: AIR 1961 Ker 136

Author: M Menon

Bench: M Menon, T Joseph, P G Menon

JUDGMENT M.S. Menon, J.

1. These Second Appeals were referred to a Full Bench by a common order dated 19-2-1958. The first question for determination is whether a tenant is entitled to be in possession until he is paid not only the amount of compensation embodied in the decree as originally passed but also the compensation granted under Sub-section (3) of Section 5 of the Kerala Compensation for Tenants Improvements Act, 1958.

2. Sub-section (1) of Section 4 of the Act (omitting the provisos thereto) provides:

"Every tenant shall, on eviction, be entitled to compensation for improvements which were made by him, his predecessor-in-interest or by any person not in occupation at the time of the eviction who derived title from either of them and for which compensation had not already been paid; and every tenant to whom compensation is so due shall, notwithstanding the determination of the tenancy of the payment or tender of the mortgage money or premium, if any, be entitled to remain in possession until eviction in execution of a decree or order of court"; and Sub-section (3) of Section 5:

"The amount of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree and the re-valuation of an improvement, for which compensation has been so adjudged, when and in so far as such re-valuation may be necessary with reference to the Condition of such improvement at the time of eviction as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent, or otherwise in respect of the tenancy shall be determined by order of the court executing the decree and the decree shall be varied in accordance with such order".

3. In *Columbus v. Narayanan*, 1954 Ker LT 518 a Division Bench of the Travancore-Cochin High Court dealt with the question as follows:

"It is argued that there is no express provision in the Tenancy Act justifying a virtual stay of the execution of the decree in such a situation. No doubt there is no such express provision in the Act. All the same, it is clear that the effect of the provision contained in Clause 3 of Section 5 read with Clause I of Section 4, is to postpone the execution of the decree for delivery of properties until the defendant's claim for value of improvements is finally settled. Section 4 states that every tenant shall on eviction be entitled to compensation for his improvements effected on the property and that he is entitled to remain in possession until eviction in execution of a decree or order of Court. The compensation to be paid to him on eviction is not only the compensation adjudged by the decree but will also include the additional amount of compensation that may be fixed by order of the execution court under Clause 3 of Section 5. It is also stated in that clause that when an order is passed by the executing court determining the defendant's claim for additional compensation, the decree in the

case shall be varied in accordance with that order. Thus the purport of an application presented to the execution court for fixing the additional amount of compensation due to the defendant-tenant, is for a variation of the original decree in accordance with the tenor of the ultimate order that may be passed on such an application. The inevitable consequence following from such an application is a virtual stay of the execution of the decree in the case because until the exact form of the decree as varied in accordance with the order that may be passed on that application is known, the executing court will not be in a position to know the actual amount of compensation to be paid to the tenant as a condition precedent to his eviction from the property. Thus Clause I of Section 4 read with Clause 3 of Section 5 of the Tenancy Act operates by implication as a statutory stay of eviction of the tenant from the holding pending adjudication by the execution court of the claim put forward by him for additional compensation as contemplated by Clause (3) of Section 5. The decree-holder's prayer for delivery of possession of the properties even before the determination of the defendant's claim for additional compensation cannot therefore be allowed".

We are in agreement with his view.

4. In Chandu Kutti v. Viayathen Mahatlevi, AIR 1928 Mad 534 Jackson, J., came to the same conclusion under the analogous provisions of the Malabar Compensation for Tenants Improvements Act, 1899. Sections 4(1) and 5(3) of the Kerala Compensation for Tenants Improvements Act 1958, correspond to Sections 5(1) and 6(3) of the Malabar Compensation for Tenants Improvements Act, 1899.

5. In Abdulla Koya v. Kallumpurath Kanaran, AIR 1918 Mad 94 a Division Bench of the Madras High Court consisting of Sadasiva Aiyar and Spencer JJ., had to deal with the question. In that case Spencer, J., said:

"I think, the intention of the legislature is clear enough. It was intended that there should be a complete and final settlement between the lessor or mortgagor and his lessee or mortgagee of all that is due from the former to the latter and from the latter to the former up to the date when the transfer of possession takes place and that the subsequent reopening of accounts between parties whose legal relationship has ceased should be avoided".

6. In M. Sankaran v. A. Sankaran, AIR 1923 Mad 347 another Division Bench of the Madras High Court consisting of Spencer and Rameasam, JJ. the court appears to have come to a different conclusion. Spencer J., said:

"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 revaluation is made".

and 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".

This decision is fully discussed in AIR 1928 Mad 534 and we do not think we can add anything useful to that discussion.

7. The second question for consideration is the true meaning of the words "the date up to which compensation for improvements has been adjudged in the decree" occurring in Sub-section (3) of Section 5 of the Kerala Compensation for Tenants Improvements Act, 1958. If those words only mean the date of the decree, it is difficult to understand why a more cumbersome phraseology has been employed.

We think the idea of using the words "the date up to which compensation for improvements has been adjudged in the decree" was to strip the decree on the normal presumption that it resolves all rights up to the date on which it is given, and permit the court to award compensation for the improvements, if any, effected subsequent to the date on which the Commissioner, for example, valued the improvements.

8. In Raman Gangadharan v. Kochukunju Lekshmanan, 1957 Ker LT 1274 : (AIR 1958 Kerala 105) a Division Bench of this Court had to consider the meaning of these words. Koshi, C. J., said, "The valuation was in 1949 and as mentioned earlier, the decree under execution was passed on 30-8-1955. Sub-section (3) contemplates the award of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree and in objections filed to the execution application the appellant set out that since the Commissioner submitted his report fixing the value of compensation, he had constructed two buildings in item 1 of A schedule to the decree and that in addition, he had planted 25 cocoanut trees, 3 cashewnut trees and 4 mango trees. One of the grounds on which the learned District Judge negatived the claim for valuation of the subsequent improvements is that in order to enable the tenant to claim their value, such improvements should have been effected after the date of the decree. Normally a decree will be deemed to have settled the rights and liabilities of the parties as they stood on the date it bears, but Sub-section (3) contemplates payment of the value for improvements subsequent to the date up to which compensation for improvements has been adjudged in the decree. Plainly these words do not mean that compensation under this sub-section can be paid only for improvements made after the date of the decree", referred to the cases cited at the bar, and continued.

"Presumably the legislature was providing for cases where as in this case valuation happened to be made long before the date of the trial court's decree. The claim made in respect of 'subsequent improvements' cannot therefore be negatived on this ground, particularly when in Travancore area payments used to be seldom made for improvements effected after the date of the institution of the suit. Such improvements have in the past invariably been regarded as not to have been made bona

fide and as such even though well-nigh four years had elapsed between the date of the valuation and the passing of the decree, the appellant could not be blamed for not asking for a fresh valuation before the date of the decree".

We are in agreement with this view.

9. In S. A. No. 968 of 1957 the claim is for the value of new improvements effected subsequent to the trial court decree and for revaluation under Section 5(3) and in S. A. No. 656 of 1957 the claim is for the value of new improvements effected subsequent to the decree of the first appellate court. In the light of what is stated above these claims have to be investigated, and these cases remanded for that purpose with the direction that no eviction should be ordered until the court is satisfied that the entire compensation due under Sections 4(1) and 5(3) has been paid or deposited in court to the credit of the tenants concerned.

10. The Second Appeals will stand allowed as above; but in the circumstances of the case without any order as to costs.