Present: Mr. Justice Wood Renton and Mr. Justice Grenier.

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MUDIANSE, *et al. v.* SELLANDYAP, *et al.*

D.C., Kurunegala, 2,493.

Compensation for improvements—Persons holding under a planting agreement — Right to compensation — Lessees — Roman-Dutch Law — Principle of assessment.

Where a person improves land under a planting agreement with the owner, and is subsequently ejected by the transferee of the owner, such person is entitled to compensation for improvements.

GRENIER A.J.—A lessee of land is entitled, under certain circumstances, to claim compensation for improvements made by him.

APPEAL by the defendants. The facts are fully set out in the following judgment of the District Judge (Bertram Hill, Esq.):—

"The plaintiffs in this case and the sixth defendant took from the third, fourth, and fifth defendants the land Welikandehenyaya on the 11th January, 1900, on a planting agreement registered on 10th December, 1903.

"The terms of the agreement were briefly: (1) that the planters should put in coconut plants, and the land was to be divided between the two parties at the expiration of ten years, and that meanwhile the planters were to enjoy the whole of the produce of the plaintains, fine grain, &c.; (2) that if any dispute should arise regarding the title of the first party (*i.e.*, the landowners, third, fourth, and fifth defendants) to the land and thereby prevent the planters from carrying on the plantation, the first party should be responsible to the planters for all the damages suffered thereby.

"The plaintiffs say that they duly began planting, and in December, 1903, the first and second defendants, alleging that the third, fourth, and fifth defendants had transferred the land to them, forcibly ejected the plaintiffs.

"They claim damages, by reason of their being prevented by the defendants from planting the land, to the amount of Rs. 2,000, and pray for such further and other relief as the Court shall seem meet.

"The first and second defendants deny any forcible entry on the land, admit that they purchased the land Welikandehenyaya from the vendee of the third defendant and from defendants fourth and fifth, profess to be in peaceful and lawful possession, and claim that as their deeds of sale were registered prior to the agreement referred to in the plaint, they ought to prevail in law against the said agreement, which is of no force or avail in law.

"The third and fourth defendants aver that the plaintiffs could not carry out the terms of the planting agreement, and surrendered it.

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The fifth defendant filed no answer. The sixth defendant was joined as a defendant, because it was alleged he was unwilling to join the plaintiffs and was acting in collusion with the other defendants.

" The case was decided by arbitration, but as the fifth defendant did not sign the reference to arbitration, the arbitrators' award was set aside in appeal.

" The main issues between the plaintiffs and the first and second defendants are—

" (1) Is the deed of agreement of any force in law against the prior registered deeds of sale of the first and second defendants?

" (2) If this question is answered in the negative even, does it constitute a valid defence to plaintiffs' action?

" Before going further, I should state that I do not see any reason for holding that there was any fraud perpetrated by the first and second defendants in getting their deeds registered at an early date. They may have been aware that the planting agreement was not registered, but this fact (as the authorities quoted by Mr. Markus show) raises no presumption of fraud.

" I should also add that I see no reason to doubt that the plaintiffs planted the land according to the terms of the agreement, and that the entry of the first and second defendants in the land was a forcible one—that they were in fact trespassers. It is very unlikely that the plaintiffs, having made extensive plantations and obtaining a fair income from the plantains, would have resigned the agreement.

" On the first issue there can be no doubt that the deed of indenture pleaded in the plaint cannot prevail against the prior registered deeds of sale of the defendants first and second, and if the plaintiffs were attempting to enforce the provisions of the agreement as against them, and had asked for a decree of the Court declaring them entitled to carry out the agreement, their action would of course fail.

" But, holding as I do that the plaintiffs were *bonâ fide* possessors of the property, and that they were dispossessed forcibly and without due process of law, I consider that they are entitled to compensation for improvements. The law on that point is clear.

" It must be admitted that the word compensation does not appear in the plaint, but the facts are fully set out, and the action has proceeded on the assumption that the measure of the damages claimed by the plaintiffs for forcible dispossession was practically the value of the improvements effected by them, plus the value of the prospective plantain crops.

" The third paragraph in the prayer of the plaint is sufficiently comprehensive to cover an order of the Court for payment of compensation. In it the plaintiffs pray for such other and further relief as to the Court shall seem meet.

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"I am in some doubt (though the point has not been distinctly raised in the pleadings) whether the plaintiff can join in one action a claim against the third, fourth, and fifth defendants for breach of the covenants in the deed of indenture with a personal action for damages against the first and second defendants; it is urged that the action is entirely on the agreement, and that plaintiffs' remedy is against those with whom he has contracted, viz., third, fourth, and fifth defendants. The cause of action, however, is the same in both cases, namely, the wrongful act of the first and second defendants.

"I am doubtful, too, if the third, fourth, and fifth defendants are liable on the deed of indenture. If the plaintiffs had taken the precaution of registering the deed, they could have enforced their rights under it against subsequent purchasers from the landowners.

"Surely it is not the latter's fault that the plaintiffs failed to register, and surely they are not precluded by the deed of indenture which binds their assigns as well as themselves from parting with their rights in the land to third parties?

"The fourth and fifth defendants, who are ignorant women, appear to have been induced by third defendant and first and second defendants to sell their share of the land.

"In view of the ultimate clause in the deed of indenture, which refers to assigns, it does not seem to me that the disputes mentioned in the penultimate clause have any reference to disputes raised by persons deriving title from the landowners (the first party), but to disputes of outsiders who claims title against the first party.

"The only question then that remains to be determined is the amount of compensation which first and second defendants are liable to pay to the plaintiffs and sixth defendants for improvements."

The District Judge condemned the first and second defendants to pay to the plaintiffs and the sixth defendant Rs. 2,000 as compensation for improvements.

The first and second defendants appealed.

Van Langenberg, for the appellants.

Sampayo, K.C., for the respondents.

Cur. adv. vult.

18th June, 1907. GRENIER, A.J.—

The only question argued before us on this appeal was whether the respondents were entitled to compensation for improvements made by them and the sixth defendant on the land called Welikandehenyaya, from which they have been ousted by the first and second defendants, who claimed title under the third, fourth, and fifth defendants. The District Judge has awarded respondents and the sixth defendant the sum of Rs. 2,000 and it was contended for the

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appellants that even if the respondents were entitled to compensation, the District Judge had not guided himself by the rules laid down in the case of *De Silva v. Shaik Ali*[1] in arriving at the amount awarded.

The principal point sought to be made by Mr. Van Langenberg was that the respondents were not entitled to compensation because they had not made the improvements in question as owners, and he cited from *Voet*, 5, 3, 21, and 6, 1, 36, in support of his contention. I think I am right in saying that the Roman-Dutch Law, as understood and administered in Ceylon, does not limit the right to claim compensation to such persons only. The remedy is a purely equitable one, and it has been held by this Court in the case of *Muttiah v. Clements*[2] that a lessee can, in certain circumstances, claim compensation for improvements. The present case is not exactly the case of lessor and lessee. The respondents are the lessees of the third, fourth, and fifth defendants, and the first and second defendants are their assigns, or to be more correct the respondents entered under a planting agreement with the third, fourth, and fifth defendants which was to run for a term of years and under which certain reciprocal obligations were contracted. By the mere accident of the respondents not having registered their lease, the first and second defendants, who have registered their conveyance, have been able to maintain their title to the land as against the respondents, who, at the date of the dispossession by the first and second defendants, were in *bonâ fide* possession of the same. I would emphasize the nature of their possession, because it is an essential ingredient in all claims which the Roman-Dutch Law recognizes when awarding compensation in respect of *impensæ utiles* as distinguished from *impensæ necessariæ*.

Besides, it has been held by this Court that a lease is a *pro tanto* alienation, and that affords an additional ground in support of the present claim for compensation. It has been held by my brother Wood Renton in the case of *Banda v. Hendrick*[3] that a usufructuary mortgagee can maintain a possessory suit against his mortgagor, and that he has a sufficient beneficial interest in the property to constitute a possession *ut dominus*. It has been decided in the case of *Perera v. Sobana*[4] that even the lessee of a usufructuary mortgage can maintain a possessory suit, and, by analogy, it is in my opinion competent for a lessee to maintain such an action. His right to do so may properly be based on the ground that he is the owner for the time being, or has such a beneficial interest in the property leased that he can successfully claim to be restored to possession in the event of his being dispossessed by a third party. The case of *Appuhamy v. Silva and another*[5] is a strong

[1] (1895) 1 *N. L. R.* 228.
[2] (1900) 4 *N. L. R.* 158.
[3] *App. Court Reports*, p. 81.
[4] (1884) 6 *S. C. C.* 61.
[5] (1891) 1 *S. C. R.* 71.

authority in support of the view I am taking. There Clarence and Dias JJ. held that the right to retain possession of land until compensation is paid for improvements may be asserted by the party who has effected the improvements, not only as against the owner under whom he entered as a tenant, but as against those claiming title to the land on conveyance from such owner. The only difference between that case and the present one is that here the tenant is not in possession, having been dispossessed by the owner's vendees or assigns, but that should make no real difference on the question of compensation where there has been a forcible ouster, as in this case.

In the case of *Appuhamy v. Silva*[1] which was decided by Burnside C.J. and Withers J., the two learned Judges were of opinion that neither by Kandyan Law nor Roman-Dutch Law could a tenant retain leasehold premises against all the world till compensated for the benefit to the owner of the soil for improvements made by the tenant. In neither of the cases I have cited have any authorities from the Roman-Dutch Law been referred to, and it goes without saying that the cases are directly in conflict with each other.

The balance of judicial opinion, however, as far as it can be discovered in decisions of the Appellate Court, is, I think, in favour of the respondents' contention. It certainly seems inequitable to send the respondents away empty, and leave the defendants in possession of the fruits of their labours, simply because the respondents had not complied with the statutory requirements as to registration.

In cases where the law is doubtful, or is rendered uncertain and obscure by conflicting pronouncements, no better course can be followed than to apply the principles of natural justice and equity about which agreement cannot but be universal.

As the District Judge in awarding damages has entirely overlooked the rules laid down in the case of *De Silva v. Shaik Ali*,[2] a would, whilst affirming his decree awarding compensation, send the case back with directions that the District Judge should ascertain, after applying the rules I have referred to, what compensation the plaintiff and the sixth defendant are entitled to, and enter judgment for them accordingly.

There will be no costs of this appeal. The costs in the Court below will be dealt with by the District Judge after he has determined the amount of compensation.

WOOD RENTON J.—

I concur on both points. On the question as to the measure of compensation, I have nothing to add. But I desire to say something as to the right of compensation itself. It is quite true that

[1] (1892) 1 *S. C. R.* 243. [2] (1895) 1 *N. L. R.* 228.

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there is a strain both of Roman-Dutch (*cf. Voet*, 5, 3, 21, and 6, 1, 36; *Kotze's Van Leeuwen*, ii., 112*n*) and of Ceylon authority (*Appuhamy v. Silva*[1]) which supports Mr. Van Langenberg's argument that no common law right to compensation could arise in such a case as the present. But the weight of recent decisions here, as my brother Grenier has shown, is on the other side; and I am inclined to think (see *Nathan*, ii. 378, 379) that South African authority supports it also. As to the equitable right of the respondents to relief there can be no question. The view taken by the third, fourth, and fifth appellants of the value of the work that the respondents were doing is evidenced by the fact that, under the planting agreement of 1900, it gave the latter a right not only to the produce while the plantation was going on, but to a definite share of the land when it was completed.

Appeal dismissed : case remitted.