

1900.  
June 19 & 21  
and  
August 29.

MUTTIAH v. CLEMENTS.

D. C., Kandy, 12,380.

*Entry into possession of land under promise of lease—Permanent improvements effected by tenant—Subsequent lease by a landlord to a third party—Right of former tenant to retain possession as against lessee until compensation was paid.*

Where C entered into possession of a property (under a written promise from the incumbent of a vihare, who had not attained his majority, that he would be given a lease for ten years when the incumbent came of age) paid rent in advance and materially improved it, and where a trustee appointed under the Buddhist Temporalities Ordinance of 1889, which vested all temple lands in the lay trustees of the temple, leased to M the same lands for a term of ten years,—

*Held*, in an action brought by M against his lessor for failing to deliver possession and against C for wrongfully withholding possession, that C had a right to compensation for the permanent improvements effected by him, and that he was entitled to retain possession until such compensation was paid.

Case reported in *Ram.*, 1877, p. 157, questioned.

The right to compensation arises when one who is in possession of the property of another expends money on that property either on necessary maintenance or improvements which permanently increase the value of the property.

The cost of erecting a factory on a tea estate and of clearing the tea which had been overgrown by jungle should be compensated; but the person in possession has no right to put on one side of the account the amount spent by him in growing and manufacturing tea and on the other side his receipts, and deducting the latter from the former claim the balance as necessary expenditure.

PLAINTIFF (Muttiah) prayed that he may be declared entitled to the possession of a certain land known as Pendleton estate, and that the defendant Clements be ejected therefrom.

It appeared that Pendleton estate was leased by the incumbent of the Degaldoruwa Vihare to Messrs. Walker and Dewar on the 7th February, 1885, for a term of ten years; that they abandoned it in May, 1894; that Clements, who was employed on the estate by the lessees, agreed with the incumbent, who was then a minor, to work up the estate, and on obtaining a written promise on the 18th December, 1894, that he would be given a lease for ten years as soon as the incumbent came of age, he entered into possession paying Rs. 400 in advance as rent. He weeded that estate and cleared the roads, drains and boundaries, and manured the tea and kept in cultivation 60 acres. He also built a factory and fitted it with machinery.

On the 22nd August, 1896, Kiri Banda, who had been appointed trustee of the vihare under the Buddhist Temporalities Ordinance, 1889, sent to Clements a letter of demand claiming rent. In the following month he visited the estate and promised to Clements that he would put the matter before the members of the Provincial Committee (elected under that Ordinance) and try and obtain for him a lease. In November, 1897, the Secretary of the Provincial Committee wrote to him and asked whether he would offer better terms than those offered to the Committee by another person. He (Clements) offered better terms, but they were not accepted. The trustee leased the land to the plaintiff, under the orders of the Committee in December, 1897, but as Clements refused to vacate the estate unless compensation were paid to him for all the improvements he had made, plaintiff sued him and the trustee. They filed separate answers, but the District Judge after partly hearing the case directed the defendant Kiri Banda (trustee) to be made co-plaintiff, under section 18 of the Civil Procedure Code, inasmuch as the plaintiff and the trustee were acting together against the defendant Clements, and his claim to compensation could be more easily decided in the present action without driving him to bring another suit.

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After the trustee, Kiri Banda (first defendant), was made co-plaintiff the trial proceeded and the District Judge found as follows:—

“ The total expenditure by defendant (Clements) to September, 1898, was Rs. 33,331 and the total income Rs. 26,298. The balance deficit was Rs. 7,028. At the date of his entry the estate was worth Rs. 100 per acre; after his improvements it was worth Rs. 250 per acre. He was a *bonâ fide* possessor, and not a tenant. The improvements effected by him, viz., building a factory, a set of lines and agricultural improvements were *impensæ utiles*. “ If a mortgage is to be treated as *impensa utilis* (as in *Nicholas de Silva v. Shaik Ali*, 1 N. L. R. 228), there is every reason for holding that a factory must be treated as such. Following the rules laid down in that case, I fix the compensation at Rs. 7,028, the balance of expenditure uncovered by the income.

“ The defendant (Clements) is not entitled to retain possession as against the plaintiff lessee, until compensation is paid, if I am to follow the decision in D. C., Badulla, 20,137 (*Ram. 1877, p. 157*). But my own opinion is that judgment should be entered for plaintiff for possession, and for defendant for compensation, and the plaintiff's right to possession postponed until the compensation is paid.

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“ As the plaintiff is entitled to immediate possession (following the Badulla case), I take it he is also entitled to damages, the meaning of which is, I think, the profits valued by the defendant from the date of the lease to the plaintiff. Such profits amount to Rs. 117. The plaintiff is entitled to damages to that extent.”

Defendant (Clements) appealed, as also did the trustee.

The two appeals were heard together.

*Bawa* (with him *W. Pereira* and *Allan Dribery*), for defendant.  
*Van Langenberg*, for plaintiff.

*Cur. adv. vult.*

BONSER, C.J.—

The facts of the case may be shortly stated thus. An estate known as the Pendleton estate was the property of a Buddhist temple, and had been leased to two lessees by the incumbent of the temple for a term of ten years, which expired in February, 1895.

The lessees had planted 60 acres with tea, but finding that the venture did not pay abandoned it before the expiry of the lease. The defendant Clements, a Jaffna Tamil, owning a small tea estate in the neighbourhood, approached the incumbent with a view to getting a lease of this estate. On the 18th December, 1894, the incumbent, in consideration of Rs. 400 paid by Clements, gave him a written promise to grant him a lease at the rate of Rs. 2 per annum an acre for the sixty acres of tea, the lease to commence from February, 1895. The length of the lease was not specified, but the lessee was to pay five years' rent on its execution. The incumbent was then a minor, and was to give a formal lease on attaining majority. Clements accordingly went into possession, cleared the sixty acres of tea of the weeds which had overgrown it, and built a small tea factory, using for this purpose the materials of an old coffee store which was on the land.

Unfortunately he was not aware of the change in the law effected by the Buddhist Temporalities Ordinance of 1889, which vested all temple lands in the lay trustees of temples, and provided that no lease should be made by the trustees except with the approval of the Provincial Committee. On the 22nd August, 1896, the trustee made a formal claim for three years' rent by a proctor's letter of that date. On receiving that letter Clements sent for the trustee, who told him that he ought to pay rent to him, and promised to put the matter before the Committee and let him know whether he could have a lease. He seems to have told Clements to go on cultivating the estate in the meantime.

Clements sent in a formal application to the Committee, and as his application was not successful he wrote to the Committee the letters of the 20th September, 1897, 25th October, 1897, and 30th

November, 1897, which will be found in the record. For some reason or other the trustee and the Committee were unwilling to lease the premises to Clements, and ultimately by a lease dated the 21st September, 1897, the premises were demised to the plaintiffs for a term of ten years on terms less favourable to the trustee than those offered by Clements.

The lessees being unable to obtain possession commenced this action on the 16th May, 1898, against the trustee and Clements, alleging that the trustee had failed to put them in possession in accordance with the lease, and that Clements was wrongfully withholding possession and claiming relief.

Clements in his answer alleged that the defendant trustee and the Committee, who were not parties to the action, had acquiesced in his occupation of the land, and had allowed him to spend money on it, and he claimed to be entitled to a large sum by way of compensation in respect of money expended by him in improving the estate by building the factory and clearing the estate of weeds. He also claimed the difference between the moneys expended by him in the upkeep of the estate and the receipts, contending that the value of the estate had been permanently increased to an amount exceeding the sum claimed.

The District Judge, when the case came on for trial, ordered the defendant trustee to be made a plaintiff in spite of his protest, and to file a replication in order that the question might be decided as between him and Clements. It was contended that this order was wrongly made. It purports to be made under section 18 of the Civil Procedure Code, which provides that the Court may order that any plaintiff may be made defendant, or any defendant may be made a plaintiff, or that the name of any person who ought to have been joined whether as plaintiff or defendant be added, and it was argued that the power is limited by the proviso in the next following section that no person is to be added as plaintiff without his consent.

It is unnecessary to decide this question, for the trustee did not appeal against the order. He filed a replication and accepted the position, and I am of opinion that it is too late for him now to take the objection.

The District Judge gave judgment for the plaintiffs as against Clements for possession of the land, and awarding them Rs. 117 by way of damages, and ordered the added plaintiff as trustee of the temple to pay Clements Rs. 7,028 as "compensation for improvements." He held that Clements was not entitled to retain possession of the land as against the lessees until the compensation was paid, following a decision of this Court

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(*Rāmanāthan*, 1867, p. 187), of which, however, he did not approve, though it was binding on him. For my own part I do not understand how, if a person is entitled to compensation and to retain the property against the owner until paid, he can be deprived of his right by the owner leasing the property to a third person, or how such third person, who has taken a lease with notice of the facts, can be in a better position than the owner himself.

The right to compensation arises when one who is in possession of the property of another expends money on that property either on necessary maintenance or improvements which permanently increase the value of the property. Now, as regards part of the money expended by Clements, I am not prepared to allow it to be necessary. I do not think that Clements is entitled to put on one side of the account the amounts spent by him in growing and manufacturing tea and on the other side his receipts, and deducting the latter from the former claim the balance as necessary expenditure. I fail to see on what principle the owner can be made to bear the loss incurred in an unsuccessful agricultural speculation.

The evidence of Mr. Holloway as to the increase of value of the estate I reject entirely as being mere conjecture.

The permanent improvement by clearing the tea which had been overgrown by jungle rests on a different footing. Clements says that this cost him a rupee an acre for five months. This on sixty acres would amount to Rs. 300. The cost of erecting the factory, which was a permanent improvement, was Rs. 945.75, and he is entitled to that sum also. I am of opinion that the amount of compensation should be reduced to Rs. 1,245.75, but that no damages should be given to the plaintiffs, and that the defendant Clements should be declared entitled to retain possession until the compensation is paid. The defendant Clements will have the costs of his appeal, and there will be no costs of the trustee's appeal.

I agree with the District Judge in thinking that the trustee has behaved badly in this matter, and I suspect the *bonâ fides* of the lease to the plaintiffs, for I find that one of the lessees states in his evidence that his first visit to the land was when he went to take possession after the lease.

I hope that even now some arrangement will be made whereby Clements will get a lease of this estate, the plaintiffs surrendering their lease.

MONCREIFF, J.—I am of the same opinion.