

1963

Present : Sansoni, J., and L. B. de Silva, J.

L. J. DHARMARETNA, Appellant, and M. E. A. PERERA,
Respondent

S. C. 261/60—D. C. Anuradhapura, 5519

Compensation for improvements—Jus retentionis—“ Bona fide possessor ”.

The defendant originally came to live on a land of the plaintiff as a licensee or tenant. Subsequently, however, there was a change in the relationship. The defendant became at some stage an occupier who improved the land by putting up a substantial house on it with the acquiescence of the plaintiff on the understanding that he would be allowed to live on the land indefinitely and enjoy the benefit of his improvements.

Held, that, in the circumstances, the defendant should be treated as a bona fide possessor and given all the rights of one, both as regards compensation and the right of retention.

APPEAL from a judgment of the District Court, Anuradhapura.

H. W. Jayewardene, Q.C., with *M. S. M. Nazeem* and *E. St. N. D. T. Tillekeratne*, for the Defendant-Appellant.

N. E. Weerasooria, Q.C., with *W. D. Gunasekera*, for the Plaintiff-Respondent.

Cur. adv. vult.

May 6, 1963. SANSONI, J.—

The Plaintiff, who is the permit holder of a Crown land, has sued the defendant in ejectment and for damages in respect of a house which the plaintiff claims to have constructed on that land. The defendant's answer was that he is living in a house which he himself built on that land with the knowledge and acquiescence of the plaintiff, because the plaintiff requested him to live on the land and look after it, undertaking to give him an acre with the permission of the Government.

Upon the evidence led at the trial it is clear that the defendant came to live on this land in 1943 in a house which the plaintiff also occupied. The defendant has stated that he later built a house for himself at the plaintiff's request and lived in it until it came down in 1957 during a flood. He then built a house in which he is now living at a cost of Rs. 7,000 at the plaintiff's request and on the plaintiff undertaking to give him an acre of land. The plaintiff's version as to how the new house came to be built is that the defendant demolished the house in which one Edwin Perera had lived, and built the new house in its place. He denied that the land was affected by floods in 1957.

One matter is clear, as the learned District Judge himself holds, and that is that the house in which the defendant is living is a new house which he himself built. The plaintiff has in his plaint not only claimed

that he built that house, but he has claimed damages in Rs. 350 from the defendant for an alleged attempt to alter it. The plaintiff in his evidence conceded that the defendant built the new house; but he has described it as "valueless", although his witness valued it at Rs. 1,500. That witness also admitted that in 1957 a wall of the old house came down owing to strong winds; he said, further, that all the walls of the old house were made of mud while the present house is built of bricks, lime and cement.

The learned District Judge has awarded the defendant a sum of Rs. 2,500 as compensation for the new house, but he held that the defendant was not entitled to a *jus retentionis*. It is this last finding that has been mainly attacked in appeal. Mr. Jayewardene also argued that the compensation awarded was inadequate, but there is no material upon which we can say that the learned Judge should have awarded the defendant more.

With regard to the *jus retentionis*, it is necessary first to decide under what circumstances the defendant built the new house. He had been on the land for 15 years when he came to build it. For about four years at most the plaintiff recovered occupation fees from him, but after that nothing was paid. One thing seems certain, and it is that the plaintiff was well aware that the defendant was building a substantial new house at a cost of about Rs. 2,500. Yet no protest was raised by the plaintiff.

The defendant's position is that the plaintiff asked him to build it. The learned Judge has held that no promise was made by the plaintiff to give the defendant an acre of land, and we accept that finding. But I think the circumstances show that when the defendant built the house, he had a reasonable expectation of being allowed to occupy it for an indefinite length of time. The friendly relations that existed between the parties for such a long time; and the large sum of money that went in the construction of the house, are clear indications that when the house was being built it was understood between the parties that the defendant could occupy it for a long period.

In these circumstances I think the defendant should be treated as a bona fide possessor and given all the rights of one; both as regards compensation and the right of retention. The position of the defendant is similar to that of the improver in the case of *Nugapitiya v. Joseph*¹. Mr. Weerasooria argued that the defendant was no better than a licensee, tenant or lessee, and in none of these cases is the *jus retentionis* granted in respect of improvements made by them. While it may be conceded that when the defendant originally came to the land he was a licensee or tenant, the circumstances point to a change in the relationship between the parties. The defendant became at some stage an occupier who improved the land with the consent of the owner, on the understanding that he would be allowed to live on the land indefinitely and enjoy the benefit of his improvements. When the owner seeks to cut short the

¹ (1926) 28 N. L. R. 140.

period of occupation of such an improver, he must not only compensate him, but such compensation must be paid before the improver is ejected.

I would therefore vary the decree entered in this case by ordering that (1) the writ of ejectment against the defendant shall not issue until the sum of Rs. 2,500 is paid as compensation to the defendant, and (2) that the plaintiff do pay the defendant his costs in both courts.

L. B. DE SILVA, J.—I agree.

Decree varied.

