

July 4, 1911

Present : Wood Renton J. and Grenier J.

FERNANDO *et al.* v. SLEMAN *et al.*

81—D. C. Negombò, 7,321.

Partition—Land ordered to be sold—“ Just valuation ” of a house standing on the land—Ordinance No. 10 of 1863, s. 8.

The “ just valuation ” of a house standing on a land which has been ordered to be sold under the Partition Ordinance would be the valuation of the house considered as an improvement. Both the value of the materials and the value of the completed building in its relation to the land would have to be taken account of.

THE facts are fully set out in the judgment of Wood Renton J.

Bawa, for the appellants.—The method of assessment adopted by Mr. Herft is the proper one. “ Just valuation ” of the house would be the cost of building a similar house. Counsel cited *Andris v. Rajapakse*,¹ *The Government Agent, Badulla, v. Cornelis*.²

F. M. de Saram, for the respondents.—The market value of a house would be its “ just valuation.” The market value of a house does not depend on the money expended on it, nor on the difficulties which had to be overcome in building it (*The Government Agent, Southern Province, v. Silva et al.*³). Counsel also referred to *Farrington v. Forrester*,⁴ *Belton v. The London County Council*.⁵

Cur. adv. vult.

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This is an action for the partition of the land described in the plaint with the buildings thereon. A partition has been found impracticable, and consequently the Court has ordered a sale of the entire premises. The seventh defendant-appellant has been declared entitled in the original partition decree to 1/60th share of the land and the whole of the tiled house marked C in the plan filed of record. The land was purchased at the sale by the first plaintiff-respondent. Mr. Karunaratne had been appointed commissioner to partition the land and to value the house for compensation. He assessed its value at Rs. 500. In the meantime, on the application of the seventh defendant-appellant, a commission had issued to

¹ (1901) 2 Br. 100.

² (1896) 3 Br. 27.

³ (1898) 3 N. L. R. 235.

⁴ (1893) 2 Ch. D. 461.

⁵ (1893) 68 L. T. N. S. 411.

Mr. Herft, the District Engineer, who valued the building at Rs. 1,500. The only question raised by the present appeal is whether the District Judge was right in accepting Mr. Karunaratne's valuation, as he has done, in preference to that of Mr. Herft. Mr. Karunaratne admittedly took account only of what he considered to be the present market value of the building. In his evidence he says that he took as his standard of valuation what the building would realize at a sale, that he did not consider what the house might have cost to build, and that he did not notice of what wood the doors and windows were made. He added that, in awarding compensation in the case of the sale of buildings, it is always the practice to consider the present market value. Mr. Karunaratne admitted that the site of the land was good, but said that it was built on a bad part of the land ; that it had no road frontage ; that (a point on which, as he had not noticed of what wood the doors and windows were made, he was scarcely competent to express an opinion) if the house were pulled down the materials would fetch Rs. 300 ; and that the building might have originally cost about Rs. 1,000. Mr. Herft, on the other hand, took as his standard of valuation the cost of building a similar house with the same material, and estimated its value on that basis at Rs. 1,500. The learned District Judge does not apparently dispute the accuracy of Mr. Herft's calculations, if his principle of assessment is correct. He, as I have said, prefers to adopt the principle of assessment accepted by Mr. Karunaratne.

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The question depends on the proper meaning of the words "just valuation" in section 8 of Ordinance No. 10 of 1863. In the absence of any authority to the contrary, I think that those words should be interpreted as meaning a valuation—in the present case, of the house—considered as an improvement. It is in that sense that the point would have had to be dealt with under section 5 of Ordinance No. 10 of 1863, if a partition had been ordered instead of a sale. I see no good reason for applying a different standard of value where a sale has been ordered, instead of a partition: It is obvious that, if this is a proper test, both the value of the materials and the value of the completed building in its relation to the land would have had to be taken account of. On that basis the sum of Rs. 500 appears to me to be too small an amount of compensation. It is far from clear that the plaintiffs-respondents, who are the owners of the land, will not have a good frontage for the house. Mr. Karunaratne says nothing in his evidence as to the proximity to the house on the adjoining land, to which the learned District Judge refers as a matter noticed by him on his inspection of the premises.

On the above grounds I would set aside the order of the learned District Judge adopting Mr. Karunaratne's report, and send the case back for further inquiry and adjudication in the District Court

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on the lines indicated in this judgment. The seventh defendant-appellant is entitled to the costs of this appeal. The costs of contention at the original inquiry in the District Court, I would leave, as well as the costs of the further inquiry, to be dealt with by the District Judge at the proper time. If the parties are well advised, they will obviate the necessity for any further inquiry in the District Court by an agreement as to the amount of compensation among themselves.

GRENIER J.—

I agree. The valuation made by Mr. Karunaratne seems to me to be based on wrong grounds, and I think that the test laid down by my brother should be adopted.

Sent back.

