1968 *Present* : **Alles, J., and Pandita-Gunawardene, J.**

M. P. MOHIDEEN and another, Appellants, *and* M. M. MUSTAPHA, Respondent

S. C. 119-120/1966 (F)—D. C. Batticaloa, 4378/M

Compensation for improvements—Meaning of term "improvements" —Unjust enrichment—Applicability of principle not only to bona fide possessors but also to bona fide occupiers—Fructus industriales—*Quantum of compensation—Oral agreement relating to occupation of land—Improvements made by occupier thereafter—Occupier's right to compensation despite invalidity of agreement—Prevention of Frauds Ordinance, s. 2—Evidence Ordinance, ss. 91, 92.*

Although in Ceylon the concept of the bona fide occupier has not been expressly accepted, yet it has been recognised in various forms in which compensation has been given to persons who, though they are not strictly bona fide possessors, have entered into occupation of land with the leave and licence of the owner and made improvements thereon.

Plaintiff cultivated a paddy field of the 1st defendant after it was agreed orally between them that the plaintiff could do so on condition that the 1st defendant should be paid some avanams of paddy as ground rent. On 22nd March 1963, when the harvested paddy was ready for removal, the defendants prevented the plaintiff from transporting it from the field. In the present action, in which the plaintiff sought to recover the value of the harvested paddy, it was contended on behalf of the 1st defendant (1) that the paddy crop could not be considered as an improvement to the land because after it was reaped the land was in the same condition as it was before the paddy was sown and the value of the land was not *permanently* increased, (2) that the agreement between the plaintiff and the 1st defendant was null and void and unenforceable in view of section 2 of the Prevention of Frauds Ordinance and sections 91 and 92 of the Evidence Ordinance.

Held, that the plaintiff was entitled to claim compensation for the paddy harvested by him with the leave and licence of the 1st defendant. Although the bags of paddy could not be regarded as "improvements" they were clearly "fructus industriales" and the claim of the plaintiff was based, not on a contractual right under a lease, but upon the equitable principle of the Roman-Dutch law that no one should be enriched at the expense of another. This principle applied to the case of a bona fide occupier equally with that of a bona fide possessor.

Held further, that the plaintiff was entitled to compensation as from 22nd March 1963. He acquired all the fruits gathered by him before the *litis contestatio*, whether they had been consumed or were still in existence.

APPEAL from a judgment of the District Court, Batticaloa.

H. W. Jayawardene, Q.C., with *S. H. Mohamed, P. Edirisuriya* and *M. S. Aziz*, for the 1st Defendant-Appellant.

No appearance for the 2nd Defendant-Appellant.

C. Ranganathan, Q.C., with *S. C. Crossette-Thambiah* and *C. Sandrasagara*, for the Plaintiff-Respondent.

Cur. adv. vult.

September 16, 1968. ALLES, J.—

The plaintiff instituted this action against the defendants on two causes of action. On the first cause of action, he alleged that the defendants wrongfully and unlawfully prevented him from removing a quantity of paddy which he had harvested from a field called Kekkarai Chenai. The first defendant was the owner of this field, and, according to the plaintiff, about September 1962, the first defendant allowed him to use and occupy the said land for the 1962/1963 Munmari cultivation season on the plaintiff delivering a certain quantity of paddy as ground rent for the said cultivation. The plaintiff maintained that he cultivated the said field, reaped the crop, threshed it and realised 59 avanams of paddy, a certain quantity of wet paddy and chaff paddy, all valued at Rs. 5,924.

On the second cause of action, the plaintiff claimed that the defendants had taken possession of certain articles valued at Rs. 480/- belonging to him from the wadiya situated on the field. The first defendant, as owner of the field, averred in his answer that he utilised the services of the plaintiff to assist him in cultivating the field by supervising the labourers and getting the work done, for which the defendant paid the plaintiff then and there. But when he gave evidence he took up the contradictory position that there was some remuneration due to the plaintiff when the paddy was harvested but that no payment could be made until he had looked into the accounts. The second defendant is a Vatte Vidane of the area and when the harvest was reaped, he took charge of the paddy and two days later handed it to the first defendant. The learned trial Judge has disbelieved the evidence of both defendants and in regard to the second defendant he has held that he assisted the first defendant to take charge of the crop when he was aware that there was a dispute between the first defendant and the plaintiff regarding the ownership of the crop.

The learned trial Judge, in a carefully considered judgment, has accepted the evidence of the plaintiff that the field was handed over to him by the first defendant for the purpose of cultivation and that it was agreed between the parties that the first defendant should be paid 12 avanams of paddy as ground rent. The plaintiff commenced cultivation operations in September 1962—he hired a tractor from the son-in-law of the first defendant and employed about nine or ten labourers during the sowing operations. He endeavoured to get a writing from the first defendant several times but the first defendant on one pretext or another put him off and did not give him any writing. Early in October 1962, he interviewed the Vatte Vidane and the Cultivation Superintendent and wanted dappu entered in his name but the Cultivation Superintendent was not able to comply with his request until he produced a chit from the first defendant as owner. In January 1963, he wrote the letter P3 to the President of the Cultivation Committee informing him that he had cultivated the field upon a verbal lease from the first defendant and

requesting that permission be granted to him to deliver the paddy under the Guaranteed Price Scheme, and receive payment. After harvesting the crop, and commencing to thresh the paddy, he met the first defendant and informed him that the harvest was threshed and ready to be removed and requesting him to come to the field on 21.3.63, to take his share of the ground rent. The plaintiff maintained that although the first defendant stated that he had given him 10 avanams of paddy sowing, he was only given 6 avanams and was only prepared to give 6 avanams as ground rent. The first defendant refused to accept this sum and insisted on ground rent being paid at the agreed amount of 12 avanams. The learned trial Judge has rightly, in my opinion, given credit to the first defendant for 12 avanams in pursuance of the agreement between the parties.

On 21.3.63, when the paddy was ready for removal, the first defendant did not come to the field and on 22.3.63, about 8 a.m., the plaintiff made arrangements to transport the paddy from the field and engaged a tractor, trailer and a lorry. The first defendant came there about 9 a.m. and demanded the ground rent of 12 avanams ; there was an altercation between the plaintiff and the first defendant and the first defendant refused to allow the plaintiff to remove the paddy or to give him a chit. The plaintiff got alarmed, went in search of the Vatte Vidane and the Cultivation Superintendent and failing to meet them, made a complaint to the Police at 1.35 p.m. and sought Police assistance to remove the paddy and his articles from the field. The Police arrived for inquiry to prevent a breach of the peace but the first defendant refused to allow the removal of the paddy. Some of the paddy was transported to the house of the second defendant ; this paddy together with the paddy which was on the threshing floor, was subsequently handed by the second defendant to the first defendant.

On the evidence which has been accepted by the learned District Judge, it is quite clear that the plaintiff, in pursuance of an agreement with first defendant, cultivated the field, reaped the harvest and claimed that he was entitled to the ownership of the paddy provided he paid the ground rent to the first defendant. The learned trial Judge has accepted the evidence of the plaintiff that 57 avanams of paddy were reaped and giving credit to the first defendant for 12 avanams has given judgment in favour of the plaintiff for 45 avanams of paddy on the first cause of action, and Rs. 480 for the articles claimed by the plaintiff on the second cause of action. I agree with Mr. Jayewardene that the learned trial Judge has erroneously held that the plaintiff is entitled to compensation for ' improvements ' effected by him (the improvement in question being the paddy crop cultivated by him), on the basis that he was a bona fide possessor. The paddy crop could not be considered as an improvement to the land because after it is reaped the land would be in the same condition as it was before the paddy was sown and consequently cannot be termed an ' improvement '. Counsel cited in support the case of *Madanayake v. Narikar* [1] where De Sampayo, J. held in regard to expenses

[1] *(1919) 6 C. W. R. 7.*

incurred in preparing a field for cultivation that "improvements must be of a kind which will *permanently enhance the value* of the land", and that such expenses were not improvements. This view has been supported in other judgments of the Supreme Court—vide *Muttiah v. Clements* [1], where Bonser, C.J. stated that "the right to compensation arises when one who is in possession of the property of another expends money on the property either on necessary maintenance or improvements which *permanently* increase the value of the property."

I also agree with Counsel for the appellant that the agreement in this case is null and void in view of section 2 of the Prevention of Frauds Ordinance. Counsel for the appellant submitted, that since the agreement was one that was null and void, the plaintiff was not entitled to claim the value of the paddy harvested by him by virtue of the agreement and relied on sections 91 and 92 of the Evidence Act. To permit Counsel's submission to succeed would amount to an injustice to the plaintiff, who, after expending labour and trouble in harvesting the crop, would not be legally entitled to any share of the produce because the agreement was not in conformity with section 2 of the Frauds Ordinance. As Mr. Ranganathan submitted, the question for consideration in this case is whether the plaintiff is entitled to the movables, i.e., the paddy and the implements which have been wrongfully retained by the first defendant.

In view of the findings of the learned trial Judge that the paddy belonged to the plaintiff provided he paid the first defendant 12 avanams of paddy as ground rent, it is now necessary to consider the legal position. Although the bags of paddy cannot be considered as 'improvements' they are clearly 'fructus industriales' and the claim of the plaintiff is based, not on a contractual right under a lease, but upon the equitable principle of the Roman-Dutch law that no one should be enriched at the expense of another. This principle applied to the case of a bona fide occupier equally with that of a bona fide possessor (*Per* Solomon, J. in *Fletcher & Fletcher v. Bulawayo Waterworks Co.* [2]), and was first recognised in the South African case of *Rubin v. Botha* [3]. The plaintiff was not a bona fide possessor as he did not have the *possessio civilis* and the *detentio animo domini*, nor was he a lessee since the lease was null and void but he entered the field with the leave and licence of the owner, sowed the paddy at his own expense in the bona fide belief that he would be entitled to the harvest on payment of the ground rent. As such, he had the rights of the bona fide possessor and was entitled to compensation. The principles on which a bona fide occupier was entitled to compensation have been stated by Bertram, C.J. in *Appuhamy v. The Doloswala Tea & Rubber Co.* [4], which was a case in which the lessor and lessee claimed compensation from the owner. He said:

> "That a lessee has not the *civilis possessio* is undoubted, but it may be suggested that the rights of the bona fide possessor were emphasized in those chapters (Voet 'De hereditatis petitione' and 'De rei

[1] *(1900) 4 N. L. R. 58 at 162.*
[2] *(1915) A. D. 636.*
[3] *(1911) A. D. 568.*
[4] *(1921) 23 N. L. R. 129 at 134.*

vindicatione') not because of the importance attached to his *Civilis possessio*, but, on the one hand, because of the importance attached to his bona fides, and, on the other, because of the maxim, cited in this connection, "Iure naturae aequum est neminem cum alterius inuria fieri locupletiorem." (For instances of the generality of this maxim see Voet VI. 3. 52.) There is nothing in that maxim which requires that it should be limited to persons holding the *civilis possessio*."

Although in Ceylon the concept of the bona fide occupier has not been expressly accepted, yet it has been recognised in various forms in which compensation has been given to persons who are strictly not bona fide possessors. In *Martelis Appu v. Jayawardene* [1], Hutchinson, C.J. held that "a man who takes possession in the mistaken belief that he has a good title, or that he is certain to obtain one, whether his mistake be of fact or of law, cannot be said to do so mala fide" and was entitled to compensation for improvements. In *The Government Agent, Central Province v. Letchiman Chetty* [2], it was held that the Government Agent who took possession of land under the Land Acquisition Ordinance and effected improvements on the expectation of the formal title, which in good faith he believed himself certain to obtain, may be a bona fide possessor. In *Davith Appu v. Bahar* [3] Bertram, C.J. recognised the right to compensation of a person who effected improvements on land on an informal grant, subsequently repudiated, and though he did not use the term bona fide occupier, he held that "it certainly extends the doctrine of the rights of a bona fide possessor to compensation for improvement and is thus a development of the law." In *Bandirala Vidane v. Kiri Banda* [4], in a case where a son claimed compensation from his father for improvements on a land which had been gifted to him but the donation subsequently repudiated, Bertram, C.J. said: "the right to compensation for improvements is primarily based on bona fide possession.....but it is not confined to this. In certain cases a person may have executed improvements under such circumstances that though he is not technically speaking a bona fide possessor he ought to have the rights of a bona fide possessor."

This right of a person, who has entered into occupation with the leave and licence of the owner and made improvements entitling him to compensation and the *ius retentionis* in the same manner as a bona fide possessor, has been recognised in *Nugapitiya v. Joseph* [5] by Garvin, J. who referred to the development of the law by the expansion of the doctrine of the rights of a bona fide possessor to compensation for improvements to a class of persons who have not had the *possessio civilis*. Our Courts have recognised the grant of compensation to such persons, following the principle laid down in *Nugapitiya v. Joseph*—vide *William Silva v. Attadesi Thero* [6] and *Dharmaratna v. Perera* [7]. I am therefore

[1] *(1908) 11 N. L. R. 272.*
[2] *(1922) 24 N. L. R. 36.*
[3] *(1923) 26 N. L. R. 73.*
[4] *(1924) 2 Times Law Reports 124.*
[5] *(1926) 28 N. L. R. 140.*
[6] *(1962) 65 N. L. R. 181.*
[7] *(1963) 66 N. L. R. 345.*

satisfied that the learned trial Judge came to the correct conclusion that the plaintiff in this case, on the principles set out above, was entitled to claim compensation for the paddy harvested by him with the leave and licence of the first defendant.

It was conceded by Mr. Jayewardene, that if the plaintiff was entitled to compensation for the paddy on the footing that he had the same rights as a bona fide possessor he acquires all the fruits gathered by him before the *litis contestatio* whether they have been consumed or are still in existence. (Vide Maasdorp Vol. II, 7th Edn. p. 57). In Lee's commentary to Grotius ('Jurisprudence of Holland') Vol. II p. 85, he states that according to Roman law, the bona fide possessor was accountable to the owner for fruits gathered but unconsumed at the date of *litis contestatio* but in the Roman-Dutch law " by gathering the fruits the bona fide possessor acquires in every case an ownership which is plenary and irrevocable " and he cites in support Voet 41.1.33.

The plaintiff was therefore entitled to the paddy which he had reaped and which was ready to be transported by him on 22.3.63. In regard to the second cause of action, the plaintiff's evidence is respect of the articles left behind by him at the wadiya was uncontradicted. In the result, the plaintiff's claim on both causes of action was entitled to succeed. We would therefore dismiss the appeals of the two defendants with costs payable jointly by both defendants.

PANDITA-GUNAWARDENE, J.—I agree.

Appeals dismissed.