

1954

Present : Gratiaen A.C.J. and Gunasekara J.

ANGLO-CEYLON AND GENERAL ESTATES CO., LTD.,  
Appellant, and ABUSALIE, Respondent

S. C. 424—D. C. Kandy, L 2,570

*Improvements—Claim for compensation—Bona fide possession—Proof of bona fides and mala fides.*

Before a person can claim compensation for improvements effected upon a land on the ground that he made the improvements as a *bona fide* possessor of the land he must show that he had reasonable or probable grounds to think that he had some right of ownership in the land.

**A**PPPEAL from a judgment of the District Court, Kandy.

*H. V. Perera, Q.C.*, with *Kingsley Herat*, for the plaintiff appellant.

*H. W. Tambiah*, with *A. C. M. Uvais*, for the defendant respondent.

*Cur. adv. vult.*

February 15, 1954. GRATIAEN A.C.J.—

The land which is the subject-matter of this action forms part of Naranghena Estate belonging to the plaintiff-Company. The title of the Company has been clearly established and the learned District Judge has also held in the Company's favour on the issue of prescription. He decided, however, that the defendant was a *bona fide* possessor, and accordingly, while upholding the Company's title, he awarded the defendant a sum of Rs. 3,500 as compensation for improvements. It is to the latter part of the decree that this appeal relates.

The judgment under appeal gives no indication as to why, in the circumstances of this case, the defendant was regarded as a *bona fide* possessor. In my opinion, his *mala fides* has been very clearly established by the evidence.

The property in dispute forms part of a jungle which had for over 25 years been maintained by the Company as a "wind belt" of Naranghena Estate. On 5th November 1948, the superintendent of the Estate noticed that a number of people (including the defendant and a man named Sinniah) had commenced, without his permission, to fell the trees standing on a portion of this "wind belt". He immediately protested, and on the same day the Village Headman held an inquiry on the spot. Sinniah claimed that he was the owner of the property and that he had sold ten acres belonging to him to the defendant and to certain others. The Headman advised them not to clear the land or erect buildings on it until the dispute as to title had been investigated.

On 26th January 1949, a similar incident occurred, and on this occasion the District Revenue Officer, Mr. Tennekoon, held an inquiry into the dispute. He examined the relevant deeds and plans on which Sinniah, the defendant and the other "purchasers" claimed title to the property, and pointed out to them that (as the learned judge has since held) "they were on the wrong land". In spite of this warning, the defendant, without any further investigation, insisted on clearing the jungle and commenced to erect a building on it. The Company promptly instituted this action to vindicate its title. The building in question represents the so called "improvement". It was in fact completed after the action commenced.

The defendant claimed title on a deed from Sinniah dated 23rd September 1948. It purports to convey to him a title enjoyed by Sinniah on two very recent deeds which have not been produced. The property was described as "*an undivided one acre out of undivided six acres*" which allegedly fell within certain boundaries depicted in specific title plans which the defendant admits he had not taken the trouble to examine. It was these plans which established at the D.R.O.'s inquiry that Sinniah's property was situated elsewhere.

"Possession is in good faith when the possessor thinks, *on reasonable or probable grounds*, that he has some right of ownership in the thing possessed; it is in bad faith when he does not think so"—*Wille: Principles of S. African Law (1st Edn.) p. 144*. In this case, the defendant had no reason whatsoever to believe that his "undivided one acre"

fell within the land which the Company had possessed and maintained for over 25 years, and which Sinniah (who was employed as a watcher in Kandy) had never enjoyed. The defendant ignored the proof which the D.R.O. placed before him on 26th January 1949, and if he persisted thereafter in his belief that he had title to the property, it was a reckless opinion. A trespasser who behaves in this fashion is not a *bona fide* possessor. Moreover, it is impossible to regard the building which the defendant constructed as an "improvement". The Superintendent has explained that the Company will now be compelled to re-plant the property in order to replace a necessary "wind-belt".

I would allow the appeal and set aside that part of the decree which awards the defendant a sum of Rs. 3,500 as compensation. The defendant must pay the plaintiff's costs in both Courts.

GUNASEKARA J.—I agree.

*Appeal allowed.*

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