APPELLATE CIVIL.

Before Mitter and Akram JJ.

K. K. DAS

v.

AMINA KHATUN BIBI.*

1939

Aug. 16, 21.

Improvement—*Improvement of land of another—Legal consequences—Landlord and tenant—Building by tenants on land demised—Transfer of Property Act (IV of 1882), ss. 51, 108*(h).

Buildings and other such improvements made by a person on the land owned by another do not by that accident alone become the property of the owner of the land. But if the husband builds on the lands owned by his wife intending to make the habitation more comfortable both for himself and for his wife, such building becomes the property of his wife who is the owner of the land.

If a trespasser knowingly builds on or improves another's land such trespasser has no right to claim compensation for the same or to remove the materials of the building or of the improvement and there is no principle of equity which will prevent the true owner from claiming his land with the benefit of all expenditure made on it.

If a person, who is in possession of the land of another under a *bona fide* claim of title, builds upon the land or improves the same, then, under s. 51 of the Transfer of Property Act, 1882, he can, according to his own option, either remove them or obtain compensation for the value of such building or improvement, if the same is allowed to remain for the benefit of the owner of the land.

If a stranger builds on the land, supposing it to be his own, and the real owner, perceiving the mistake of the former, stands by, the Court of equity will not allow the legal owner to insist on his legal title.

Obiter. If a tenant builds on land which he holds under his landlord, he does not thereby, in the absence of special circumstances, acquire any right to prevent the landlord from taking possession of the land and buildings when the tenancy is determined. This proposition is, however, subject to the provisions of s. 108, cl. (*h*) of the Transfer of Property Act, 1882.

In the matter of the Petition of *Thakoor Chunder Poramanick* (1); *Vallabhdas Naranji* v. *Development Officer, Bandra* (2) ; *Ramsden* v. *Dyson* (3) and *Beni Ram* v. *Kundan Lal* (4) followed.

APPEAL FROM ORIGINAL DECREE preferred by defendants Nos. 1 and 2.

*Appeal from Original Decree, No. 57 of 1936, against the decree of Bhuban Mohan Singha, Third Subordinate Judge of Hooghly, dated Dec. 12, 1935.

(1) (1886) B.L.R. Sup. Vol. 595.
(2) (1929) I.L.R. 53 Bom. 589 ; L.R. 56 I.A. 259.
(3) (1866) L.R. 1 H.L. 129.
(4) (1899) I.L.R. 21 All. 496 ; L.R. 26 I.A. 58.

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The facts of the case and the arguments in the appeal are sufficiently set out in the judgment.

Nagendra Nath Ghose and *Abul Quasem* (Sr.) for the appellants.

Panchanan Ghose and *Khondkar Mohammad Hasan* for the respondents.

Cur. adv. vult.

The judgment of the Court was as follows:—

Kazi Abdul Aziz (defendant No. 3) borrowed sums of money from Radha Ballabh Shaha (defendant No. 1) on different occasions from April 24 to October 17, 1928. The said defendant No. 1 brought a suit in 1931 to recover the same and got a decree for Rs. 3,129 odd on May 6, 1932.

Kazi Abdul Aziz had a running business with Shaikh Muhammad Hanif (defendant No. 2). The accounts were twice adjusted, once on April 13, 1931, when Rs. 1,907 odd was found due from the former to the latter, and again on October 17, 1931, when a sum of Rs. 2,304 odd was similarly found due. For both these amounts Abdul Aziz executed *hâtchitâs* in favour of Muhammad Hanif. Transactions between them, however, continued on till April 5, 1932. On that date, the former was in debt to the latter to the extent of Rs. 2,076 odd. The latter brought a suit and recovered a decree for the same on March 10, 1933. These two decree-holders executed their decrees and attached some properties as belonging to their judgment-debtor. The plaintiff appellant, who is the wife of Abdul Aziz, preferred two claims. These claims were dismissed by the executing Court on August 31 and October 4, 1933, respectively. She then instituted this suit under the provisions of O. XXI, r. 63 of the Civil Procedure Code on November 8, 1933. In the suit she claims the properties described in three schs. A(1), B(1) and C(1), as her own. On some of the plots included in sch. A(1) stands a *puccâ* dwelling house. She also claims the same on the ground that she constructed it with

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her own money after the lands had been conveyed to her in 1909 by her husband in consideration of the dower money then due to her.

The learned Subordinate Judge, by his judgment and decree dated December 12, 1935, allowed her claim to the lands described in sch. A(1) and to the structures thereon, but has dismissed her suit in respect of the properties described in schs. B(1) and C(1). This appeal is confined to the lands of sch. A(1) and to the structures thereon. We are told that an appeal has been filed by her against that part of the decree of the Subordinate Judge which is against her. Nothing which we may hereafter say shall be taken to prejudice any of the parties in respect of the properties of schs. B(1) and C(1).

Defendants Nos. 1 and 2 have preferred this appeal, in which they challenge the findings and conclusions of the learned Subordinate Judge in respect of the lands of sch. A(1) and the buildings thereon.

With regard to the lands of the said schedule we hold that the learned Subordinate Judge is right in his conclusions. The said lands had been conveyed to the respondent by her husband by a registered *kabâlâ* dated May 25, 1909 (Ext. 1). The consideration recited is the liquidation of half the dower debt then due to her. The evidence is one-sided that a dower of Rs. 1,102 was fixed at the time of the marriage. There is no evidence that that debt had been discharged by the husband before May, 1909, in any other way. There is also no evidence that the husband was involved in 1909. There is no reason why he should execute a fictitious deed as far back as 1909. We, accordingly, hold in agreement with the learned Subordinate Judge that Ext. 1 is a valid document and had passed to the respondent the lands described in sch. A(1) of the plaint.

Some of the plots mentioned in sch. A(1) constitute the homestead of the couple. The evidence is that at the time of Ex. 1 there were *kutchâ* structures thereon. Thereafter valuable structures costing

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about Rs. 4,000 have replaced those *kutchâ* buildings. The respondent's case is that with her own money she built those structures in or about the year 1923. She and her witness Abdul Barik Mallik have said that those structures had been built with the sum of Rs. 2,000 which had been given to her by her father, with Rs. 1,500 being the sale proceeds of her ornaments and with Rs. 500 being the accumulated profits of her property. The learned Subordinate Judge has believed this story but we cannot. There is overwhelming documentary evidence that the *puccâ structures* were built not in 1923, but the building operations commenced in 1927 at the earliest. The trades people who supplied the materials have been examined by the contesting defendants. They have proved that materials were supplied on credit to defendant No. 3 from 1927 to 1932. The account books produced by them (Ex. A to Ex. D series) corroborate their oral testimony. The evidence in support of the respondent's case that she got Rs. 2,000 from her father and Rs. 1,500 from sale of ornaments is of a flimsy character. Nor is there any corroborative documentary evidence to support the case that Rs. 500 had been saved from her income and applied to the building. On the evidence we hold that the building had been raised by the defendant No. 3 with his money. The suggestion of the appellants is that the money borrowed by defendant No. 3 was utilised by him in the building. This suggestion cannot be true in respect of the advances made by appellant No. 2. The debts of defendant No. 3 to him were trade debts [see defendant No. 2's plaint, Ex. C(1)-II 132.] There may be something in the suggestion of appellant No. 1, but that suggestion rests on no evidence. It is at least clear on the facts that defendant No. 3 had tapped other resources also for completing the building. The loans given by the appellant No. 1 to defendant No. 3 were in 1928 (Ex. O-II 117) but the documentary evidence establishes the fact that money was spent up to 1932 in completing the building. The conclusion

we arrive at is that the building was raised by funds supplied not by the respondent but by her husband, defendant No. 3, though we cannot precisely trace the ultimate source.

We have now to consider the legal position. The land belonged to the respondent but the building was erected at the cost of defendant No. 3 who knew at the time that the land was not his but his wife's. Defendant No. 3 therefore does not come within the third proposition laid down in *In the matter of the Petition of Thakoor Chunder Poramanick* (1), a proposition which has been approved by the Judicial Committee of the Privy Council in *Vallabhdas Naranji* v. *Development Officer, Bandra* (2). He, the defendant No. 3 could not have claimed compensation from respondent as there was no equity in his favour. He spent money on the structures knowing that the land was not his. The question is whether he has the right to remove the structures. If he has that right, that right must have for its basis his ownership in the structures. If he had spent in the *bona fide* belief that he was the owner of the land or had the right to build he could have claimed compensation or the right to remove the structures. That is what has been laid down all along since *Thakoor Chunder's* case (*supra*), and the principle entitling a person to compensation has now been given statutory recognition in the case of transferees (section 51 of the Transfer of Property Act). In the said case of *Thakoor Chunder* (*supra*) three propositions are laid down:—

(i) buildings and other such improvements do not by the *mere accident* of their attachment to the soil become the property of the owner of the soil;

(ii) if he who constructs the building or makes the improvement on another's land is a mere trespasser he cannot claim compensation from the owner of the soil nor has he the right to remove them;

(1) (1866) B.L.R. Sup. Vol. 595.

(2) (1929) I.L.R. 53 Bom. 589; L.R. 56 I.A. 259.

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(iii) if, however, he was in possession of the land under *bona fide* title or claim of title he can either remove them or obtain compensation for the value of the building or improvement if it is allowed to remain for the benefit of the owner of the soil, the option of retaining the building, *etc.*, or of allowing removal remaining with the latter. In *Vallabhdas Naranji's* case (*supra*) the first and third propositions were approved, but opinion was reserved by the Judicial Committee on the second proposition. The Indian decisions, however, lay down the proposition that in the case of wanton trespass the trespasser has no right to claim either compensation or the right to remove the materials. In the case before us, in view of the relationship between defendant No. 3 and the respondent, we cannot say that defendant No. 3 was a trespasser on the land within the meaning of the proposition so laid down in the cases. The decision in *Thakoor Chunder's* case (*supra*) is that the building does not become the property of the owner of the soil by the *mere accident* or attachment. This proposition lends support to the view that if there be something more, the building would become the property of the owner of the soil. The fact that the husband constructed the building on his wife's land knowing it to be his wife's, is in our judgment, such an additional and special circumstance which takes the case out of the first general proposition laid down by that Full Bench. The husband never intends in such a case to reserve any right in the structures. He intends to make the habitation, both of himself and of his wife, more comfortable.

In *Ramsden* v. *Dyson* (1), a case between landlord and tenant, Lord Cranworth L.C. laid down a principle which can be dissected into two broad propositions and from those two propositions he deduced a third proposition. The first two propositions are:—

(i) if a stranger builds supposing the land to be his own and the real owner perceiving the mistake of

(1) (1866) L.R. 1 H. L. 129.

the former knows at the time of the expenditure that the land belongs to him and stands by, the Court of equity will not allow the latter to insist on his legal title;

(ii) if, however, the stranger builds upon the land of another knowing it to be the latter's, there is no principle of equity which will prevent the latter from claiming his land *with the benefit of all the expenditure made on it.*

The third proposition deduced is that if a tenant so builds, in the absence of special circumstances, the land and the building belongs to the lessor. This last mentioned proposition must be taken subject to the provisions of s. 108(*h*) of the Transfer of Property Act.

The principles laid down in *Ramsden* v. *Dyson* (*supra*) was applied by the Judicial Committee in a case from India: *Beni Ram* v. *Kundan Lal* (1). In our judgment that decision lends authority to the view that the principle formulated in the second proposition in *Ramsden's* case (*supra*) is a principle applicable to Indian cases. This view of ours receives support from the observation of Rampini and Mookerjee JJ. in *Dharmadas Kundu* v. *Amulyadhan Kundu* (2) and of Darwood & Mya Bin JJ. in *Maung Aung Ba Ba* v. *Ma Nyum* (3). We accordingly hold that the building also belongs to the respondent.

The appeal is accordingly dismissed with costs, hearing fee three gold mohurs.

N. C. C.

Appeal dismissed.

(1) (1899) I. L.R. 21 All. 496; L.R. 26 I.A. 58. (2) (1906) I.L.R. 33 Cal. 1119.
(3) [1928] A.I.R. (Ran.) 141.