MUTHU v. KAMBALINGA.

that it was the absolute title he was purchasing. No reason can be assigned why the same protection which is afforded to a purchaser for valuable consideration at a private sale should not be extended to a purchaser at Court auction. It is a question of fact in each case what passed by the sale, an absolute title, or only the right of the mortgagees. There is evidence in this case to show that Ramadu purchased in the full belief that he was purchasing an absolute title, and that he always dealt with the property as if he had acquired an absolute estate. The decree of the Lower Court is therefore right, and this second appeal must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

1888. Sept. 6. 1889. Feb. 11.

KUNHAMMED (DEFENDANT NO. 2), APPELLANT,

v.

NARAYANAN MUSSAD (PLAINTIFF), RESPONDENT.*

Landlord and tenant—Malabar kanam—Change in character of land—Passive acquiescence of landlord—Estoppel—Compensation for improvements by tenant.

Land was demised on kanam for wet cultivation. The demisee changed the character of the holding, by making various improvements which were held to be inconsistent with the purpose for which the land was demised. On a finding that the landlord had stood by while the character of the holding was being changed and had thereby caused a belief that the change had his approval:

Held, on second appeal, that the demisee was entitled to compensation for his improvements on redemption of the kanam. *Ramsden* v. *Dyson* (L.R., 1 H.L., 129) followed.

SECOND APPEAL against the decree of F. H. Wilkinson, District Judge of South Malabar, in appeal suit No. 496 of 1887, modifying the decree of O. Chandu Menon, Acting District Munsif of Shernad, in original suit No. 457 of 1886.

This was a suit by the plaintiff to evict the defendant from certain land demised by him on kanam to the defendant's father on 17th November 1888.

The plaint stated that the land demised was a "palliyal or two-crop paddy land," and the kanam deed provided for the use by

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* Second Appeal No. 1151 of 1888.

the demisee of "water from a *chola* for 11 Indian hours daily." It was alleged that the defendant had converted a portion of this land into paramba or garden land, planting cocoanut and areca nut trees thereon, and that this alteration in the character of the land was calculated to injure the plaintiff. The prayers of the plaint were that the plaintiff be put into possession, and that the defendant pay to him Rs. 50, being the cost of restoring the land to its former condition, and arrears of rent, on payment of the kanam amount.

The defendant admitted the tenancy and the arrears of rent and the change in the character of the holding but claimed compensation for improvements.

The District Munsif held that the plaintiff had acquiesced in the change effected in the character of the holding, and passed a decree to the effect that the plaintiff should pay to the defendant the value of the improvements as valued by a Commissioner before recovering possession of the land demised.

On appeal, the District Judge without recording any finding on the question of acquiescence by the landlord reversed that part of the District Munsif's decree which related to compensation to the tenant, and decreed that the tenant should pay the cost of restoring the land to its former condition on the ground that the improvements in question were "unsuitable to the holding and inconsistent with the purpose for which it was let."

The defendant preferred this second appeal.

Narayana Rau for appellant.

Sankaran Nayar for respondent.

The arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (Muttusami Ayyar and Parker, JJ.).

JUDGMENT.—In 1868 the respondent demised a palliyal to the appellant on kanam for wet cultivation. Exhibit A which evidences the demise provided for its being irrigated from a *chola* for 11 Indian hours a day and for payment of rent in paddy. It provided also for the surrender of the land within 12 years if the rent should be in arrear. There is nothing in the document to show that any improvement unsuited to the holding and inconsistent with the purpose for which the land was demised was in the contemplation of the parties. It is found by the Judge that the appellant converted a large portion of the wet land into paramba, planting jack, cocoanut and areca nut trees. There was, however,

KUNHAMMED v. NARAYANAN MUSSAD.

evidence to show that the respondent lived within three miles, that he had means of obtaining knowledge of the conversion of the land into a paramba, and that he raised no objection. There is no doubt upon the facts found that the appellant's claim to compensation is not referable either to the kanam document or to any subsequent express arrangement made with the respondent or to any overt act on his part which is inconsistent with his present contention. Nor is there any ground for doubting the correctness of the finding that the so-called improvement is unsuited to the nature of the holding and inconsistent with the purpose for which the land was demised. In this state of facts, the Judge held that the appellant was entitled to no compensation; but that, on the other hand, he was liable to pay the respondent the cost of restoring the land to its former condition. It is urged that the passive acquiescence of the landlord was sufficient to sustain the appellant's claim to compensation and reliance is placed on the authority of *Shibdas Bandapadhya* v. *Bamandas Mukhapadhya*(1). On the other hand, the respondent's pleader draws our attention to the decision of this Court in *Ravi Varmah* v. *Mathissen*(2) and to the cases cited therein, *Pilling* v. *Armitage*(3) and *Ramsden* v. *Dyson*(4). There is really no conflict in the principle on which the cases cited were decided. The general rule was laid down in *Ramsden* v. *Dyson* in these terms. "When money is laid out by a tenant in the hope or expectation of "an extended term or an allowance for expenditure, the tenant has "no claim which a Court of law or equity can enforce if such hope "or expectation has not been created or encouraged by the land-"lord." Our decision must then depend not so much on the suitability of the improvements to the nature of the holding as on the fact of the landlord having by conduct or otherwise raised an expectation that the outlay had his approval, and that the tenant would be reimbursed when he was called on to vacate possession, and the special equity raised by such conduct. Again, in *De Bussche* v. *Alt*(5) "it was observed that if bare acquiescence is a "valid defence, it must be an acquiescence while the act acquiesced "in is in progress and not after it has been completed." The Lord Justices said "If a person having a right and seeing another "person about to commit, or in the course of committing an act "infringing upon that right, stands by in such a manner as really

(1) 8 B.L.R., 237.
(2) Second Appeal No. 296 of 1884 *unreported*; see Note at end of this report.
(3) 12 Ves. Jun., 78. (4) L.R., 1 H.L., 129. (5) L.R., 8 Ch. D., 286.

"to induce the person committing the act, and who might have "otherwise obtained from it, to believe that he assents to its being "committed he cannot afterwards be heard to complain of the act. "Mere submission to an act when it is once completed without any "knowledge or assent upon the part of the person whose right is "infringed upon is only a submission to an injury, and it cannot "take away the right infringed upon when such submission is for "any time short of the period of limitation." In the case before us the Judge appears to have decided against the tenant mainly on the ground that the improvements made were unsuited to the holding. But it is also necessary to ascertain before we dispose of this appeal whether the landlord did not stand by when the land was being converted into a garden and thereby cause a belief that such conversion had his approval. We shall ask the present District Judge to return a finding upon the record and upon any further evidence on the question mentioned above within six weeks from the date of the receipt of this order, when ten days will be allowed for filing objections.

In compliance with the above order the District Judge returned a finding to the effect that the landlord stood by when the lands in question were being converted into a garden, and thereby caused a belief that such conversion had his approval.

This second appeal having come on for re-hearing, the Court delivered judgment, modifying the decree of the District Judge and restoring that of the District Munsif.

NOTE.

RAVI VARMAH *v.* MATHISSEN.—This case came before the High Court on appeal from the District Court of North Malabar. The appellant, who was the Raja of Cherakkal, had sued to eject the respondents from certain items of property. It appeared that the respondents were in possession of that portion of the property which is in question in the following extract from the judgment, as assignees of one Bappen Chinnan under a document described as a "deed of surrender," dated 10th March 1855. Bappen Chinnan's title rested on exhibit E—a lease, dated 20th July 1849, granted to him by the appellant's kovilagam—in which it was provided "that Bappen "Chinnan should plant the paramba with four kinds of trees, and that "as soon as they come into bearing he should receive the value of

KUNHAMMED v. NARAYANAN MUSSAD.

"the improvements and surrender the land." The respondents, who were members of a German mission, had erected certain buildings and made various improvements on the land, and pleaded that the plaintiff was not entitled to eject them without paying full compensation for their expenditure.

On the question of compensation the High Court (Muttusami Ayyar and Brandt, JJ.) said:—

"As to the valuation of improvements, the appellant complains that it is excessive. But we consider that it is reasonable and in accordance with the principles laid down in second appeal No. 762 of 1884. It is no doubt true, as contended for the respondents, that several of the improvements made by them are excluded from those for which compensation is considered to be due. But we cannot say that those improvements are suitable to the purpose for which the paramba was originally let to Bappen Chinnan, or within the terms of exhibit E. We do not consider that it is competent to us to enhance the compensation either on the ground that subsequently to 1855 there was a doubt about the appellant's jemn title, or that the appellant stood by when the buildings were raised. According to the finding, the respondents got into possession as assignees of Bappen Chinnan, who was the appellant's tenant, and it was not open to him or to them to question the landlord's title. Moreover there was an express contract E as to the nature of the improvements to be made, and there is no evidence to show that the appellant since did anything which could have reasonably led the respondents to believe that he would go beyond his agreement and compensate them for other improvements. We are aware of no authority for holding that upon principles of general equity a tenant or his assignee is entitled to compensation or relief for expenditure incurred by him under the observation of the landlord, unless he can show that it was incurred with reference to some agreement. On the other hand *Pilling* v. *Armitage*(1) is an authority to the contrary. And the learned Judges, who, in *Ramsden* v. *Dyson*(2), were not unanimous in respect of the findings of the facts, were agreed as to the general rule that when money is laid out by a tenant 'in the hope or expectation of an extended term or an allowance for expenditure, the tenant has no 'claim which a Court of law or equity can enforce, if such hope or 'expectation has not been created or encouraged by the landlord.' But the present case does not fall either within that proposition or within the proposition in respect of an omission, whereby one person has intentionally caused or permitted another to believe a thing not

(1) 12 Ves. Jun., 78. (2) L.R., 1 H.L., 129.

true and to act upon such belief. It was not indeed contended in express terms that the appellant is estopped by reason of his conduct, and we cannot hold that by reason of the improvements in this case having been made within a short distance of the residence of the landlord, and on land belonging to him which he must have frequently passed, any other or further relief can be afforded to the respondents than they are entitled to under the terms of the agreement under which they held the land and by the custom of the country.

"At the same time, we cannot refrain from saying that this appears to be a very hard case, and we consider ourselves justified in the peculiar circumstances in directing that the decree do provide that the respondents be at liberty to remove within six months all the improvements made by them, for which no compensation has been allowed."

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Wilkinson.

SATHUVAYYAN (DEFENDANT No. 7), APPELLANT,

v.

MUTHUSAMI (PLAINTIFF), RESPONDENT.*

1888. August 9. Sept. 27.

Hindu law—Personal decree against managing member of joint family not impleaded as such—Effect of sale in execution of such decree—Transfer of Property Act—Act IV of 1882, *s.* 99—*Sale of mortgage property in execution of decree on a money bond for interest due on the mortgage.*

The managing member of a joint Hindu family executed in 1878 a mortgage on certain lands, the property of the family, to secure a debt incurred by him for family purposes, and in 1881 he together with his brother executed to the mortgagee a money bond for the interest then due on the mortgage. In 1882 the mortgagee brought a suit on the money bond and having obtained a personal decree against the two brothers merely, brought to sale in execution part of the mortgaged property which was purchased by a third person:

Held, that the sale did not convey the interest of another undivided brother who was not a party to the decree:

Held, *further* per *Kernan*, *J.*, that the sale in execution was invalid under Transfer of Property Act, s. 99.

SECOND APPEAL against the decree of T. Ramasami Ayyangar, Subordinate Judge of Negapatam, in appeal suit No. 814 of 1886, modifying the decree of T. Audinarayana Chetti, District Munsif of Shiyali, in original suit No. 22 of 1885.

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* Second Appeal No. 1284 of 1887.