

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Abdur Rahim.

1909.
March 3,
16.

NANJAPPA GOUNDEN (DEFENDANT), APPELLANT,

v.

PERUMA GOUNDEN (PLAINTIFF), RESPONDENT.*

Transfer of Property Act, IV of 1882, s 51—Improvements, right to claim compensation for, when allowable.

Good faith within section 51 of the Transfer of Property Act is not necessarily precluded by facts showing negligence in investigating the title.

Where, however, a purchaser knows or must be presumed to know that the vendor could sell only under certain circumstances, and he either knows that such circumstances do not exist or wilfully abstains from making any enquiries on the subject, the mere fact that he purchased for consideration will not suffice to show good faith and he will not be entitled to claim compensation for improvements effected by him.

SECOND APPEAL against the decree of the District Court of Coimbatore in Appeal Suit No. 63 of 1905, presented against the decree of the Court of the District Munsif of Erode in Original Suit No. 685 of 1903.

V. C. Seahachariar for appellant.

T. M. Krishnaswami Ayyar for *T. Subramania Ayyar* for respondent.

JUDGMENT.—The question argued in the second appeal is, whether the defendant in the action is not entitled under section 51 of the Transfer of Property Act to be paid by the plaintiff the value of the improvements which the former has effected on the land before he can be ejected? The defendant purchased the property from certain Hindu females having a limited power of disposition over it, and he alleged in answer to the claim of the reversioner, who is the respondent in this appeal, that the alienation was made for family necessity, that is, to pay off pre-existing debts. This necessity the defendant failed to prove and has therefore to give up the land. But he made certain improvements while he was in possession of the property and their value is estimated by the Munsif at Rs. 500. Both the lower Courts

* Second Appeal No. 671 of 1906.

have however negatived the defendant's right to be paid for his improvements on the ground that he not only failed to prove the necessity which he set up but that in fact he made no enquiries to satisfy himself of the existence of such necessity. The Munsif further relies on facts which show that the defendant was fully aware of the state of the family affairs of the two women who sold the land and he must have known that there was no necessity for selling it. That being so, although the purchase of the defendant was for consideration he would not have believed in good faith that it gave him a title to the property. His good faith at the time he made the improvements is based on the fact of this purchase and nothing more. What is urged in effect on behalf of the defendant is that even if he knew that he was purchasing the property from Hindu females who could sell it only under specified circumstances and that there was no need for them to sell the land still he might have believed that he had acquired a good title or otherwise he would not have spent money on its improvements. No doubt a purchaser may have notice of facts showing a defect in the title of his vendor and yet purchase the property honestly believing that he was buying good title. And we are not prepared to say that good faith within the meaning of section 51 of the Transfer of Property Act is necessarily precluded by facts showing negligence in investigating the title. In fact to hold that every default in investigating the title *ipso facto* makes section 51 inapplicable would be to exclude a very large class of cases from a rule which is based on obvious considerations of justice. But the facts of this case go much further. The defendant knew or must be presumed to have known, which is the same thing, that the persons purporting to sell the property could under the Hindu law sell it only under certain circumstances, and he either knew that these circumstances did not exist or wilfully abstained from making any enquiries on the subject. In such a case it is difficult to conceive that the purchaser could have believed and much less believed in good faith that the vendor conveyed a good title to the property.

We think therefore that the appeal fails and must be dismissed with costs.

MUNRO
AND
ABDUE
RAHIM, JJ.

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v.
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