ATKINSON, SHAW, MOULTON, EDGE AND AMEER ALI P.Cs.

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be dismissed and the judgment of the High Court affirmed. The appellants will pay the costs of this appeal.

Appeal dismissed.

Solicitors for the appellants: *Sanderson, Adkin, Lee* and *Eddis.*

Solicitor for the respondent: *Douglas Grant.*

J.V.W.

APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Ayling.

1911. September 13 and 20.

MOITHEENSA ROWTHAN AND SEVEN OTHERS (PLAINTIFFS NOS. 1 AND 3 AND THE LEGAL REPRESENTATIVES OF THE DECEASED SECOND PLAINTIFF), APPELLANTS,

v.

APSA BIVI (DEFENDANT NO. 3), RESPONDENT.*

Court sale—Stranger purchaser, bonâ fide effecting improvements—Subsequent eviction—Improvements right to value of.

A purchaser in a Court auction, who was not a party to the decree, is entitled to the value of the improvements *bonâ fide* effected by him, on being evicted from the property owing to some defect or irregularity in the proceedings leading up to the sale. The time of his making the improvements is immaterial, provided he had then an honest belief in the validity of his title. *Bonâ fides* in this connection means only honest belief in the validity of his title and does not extend to the necessity of making proper enquiries as to the title and regularity of the prior proceedings. Section 51 of the Transfer of Property Act is inapplicable to a purchaser at a court sale.

Per curiam. There is a great distinction between stranger purchasers and decree-holder purchasers. The principle of *caveat emptor* has no application to a court purchase.

There is no covenant for title implied in a court sale and the purchaser takes only the right, title and interest of the judgment-debtor.

Quære: Whether *Zain-ul-Abdin Khan* v. *Muhammad Asghar Ali Khan* (1888) I.L.R., 10 All., 166 (P.C.) lays down that stranger purchasers in order to be entitled to protection should make their purchases *bonâ fide?*

Nanjappa Gounden v. *Peruma Gounden* (1909), I.L.R., 32 Mad., 530, *Kundarpa Nath Ghose* v. *Jogendra Nath Bose* (1910), 12 C.L.J., 391, *Stock* v. *Starr* (1870) 1 Sawyer, 15; s.c. 22, (India) Fed. cases, 1084, and *Bright* v. *Boyd* (1841-1843) 1 Story 478 and *Dharma Das Kundu* v. *Amulyadhan Kundu* (1906) and I.L.R., 33 Calc. 1119, followed.

XXIV American Cyclopædia of Law and Procedure, page 70, referred to.

* Second Appeal No. 305 of 1910.

SECOND APPEAL against the decree of J. G. BURN, the acting District Judge of Tanjore, in Appeal Suit No. 80 of 1909 presented against the decree of P. VENKATARAIYER, the District Munsif of Tiruvalur, in Original Suit No. 248 of 1907.

The facts of this case are set out in the judgment.

T. R. Ramachandra Ayyar and *G. S. Ramachandra Ayyar* for appellant.

The Hon. Mr. *T. V. Seshagiri Ayyar* and *T. Natesa Ayyar* for respondent.

JUDGMENT.—In the suit which gave rise to this Second Appeal the plaintiffs claimed to recover from the defendants Rs. 800 as compensation for improvements made by them while they were in possession, as auction purchasers, of a house from which they were subsequently ejected by the defendants. The house belonged to one Johnsa Levvai and one Ramachandra Sastrial. These two persons mortgaged the house to one Samboo Ammal the fourth defendant, in the suit. The latter instituted a suit on the mortgage to which the defendants Nos. 1 to 3 in this suit were made parties as heirs of Johnsa Levvai, defendants Nos. 1 and 2 being his widows and the third defendant, his daughter. A decree was obtained on the mortgage and the properties brought to sale. The plaintiffs became the purchasers at the sale and obtained possession of the house on the 7th August, 1903. The third defendant was a minor while the suit was going on and represented by her uncle as guardian *ad litem*. Notice of the execution proceedings was issued to him. The process-server could not find him as he had left for one of the islands beyond India. The process-server's return stated that the third defendant said that she had attained majority and was competent to accept service herself and received a copy of the notice. The process-server in addition affixed the notice to the outer door of the house where the guardian *ad litem* used to reside, in token of serving it on him. The executing court apparently considered this service sufficient, for it proceeded to sale without taking any further steps to serve a notice on the guardian. After the plaintiffs had been in possession for about fifteen months, the third defendant's guardian *ad litem* put in an application on her behalf to set aside the sale on the ground of fraud. His application was dismissed by the District Munsif's Court and by the District Court on appeal. But on Second Appeal the High Court

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set aside the sale on the ground that the third defendant had not been properly represented in the sale proceedings as her guardian *ad litem* had not been properly served with notice. The third defendant subsequently obtained an order for redelivery of the properties.

The questions raised in the issues, so far as they are relevant to this Second Appeal, were whether the plaintiffs as purchasers in court auction could claim the value of the improvements made by them; and whether, if they could do so at all, they were entitled to succeed in the circumstances of this case, that is, whether they made the improvements *bonâ fide* and without notice of the circumstances invalidating the sale. With regard to the nature of the improvements made, the District Munsif's finding goes to show that they were necessary and urgent repairs required to make the house habitable. The District Munsi found that the plaintiffs were not guilty of any fraud and that they made the improvements before the guardian *ad litem* took steps to set aside the sale. He considered the plaintiffs entitled to recover the value of the improvements made by them and awarded them Rs. 512-1-6, making the amount recoverable by sale of the property in case of non-payment.

On appeal the District Judge held that the improvements were made after the third defendant's guardian's application was put in and the plaintiffs had thereby been put on enquiry as to their position. He held also that the sale was held without jurisdiction on account of non-service of notice on the third defendant's guardian *ad litem* and was void. He was of opinion that the principle of section 51 of the Transfer of Property Act could not be applied to an auction-purchaser to whom the principle of *caveat emptor* would be applicable. In the result, he reversed the decree of the District Munsif and dismissed the plaintiff's suit. The plaintiffs have preferred this Second Appeal to this court.

Mr. *T. R. Ramachandra Ayyar*, the learned vakil, for the first appellant, contends (1) that the finding of the lower Appellate Court as to the time when the improvements were made does not show that the plaintiffs did not act in good faith in making the repairs and improvements and that it was sufficient that they acted honestly in the belief that the proceedings prior to the sale to which they themselves were no parties were conducted by the

court regularly and properly, (2) that the principle of *caveat emptor* has no bearing on the question of a purchaser's right to recover compensation for improvements made by him before the sale is set-aside. He also impeached the finding of the District Judge as one not based on a proper consideration of the whole of the evidence on record.

For the respondent it is argued that, as the rule of *caveat emptor* applies to an auction purchaser, he must be taken to buy with all risks, whether arising from irregularity in the conduct of the sale or defect of title in the judgment-debtor or otherwise, and that he could not, under any circumstances, claim any compensation for improvements made by him; and secondly, that in any case it was the duty of the plaintiffs to make enquiries regarding the regularity of the sale proceedings when the sale was questioned by the guardian and that as the improvements were found by the District Judge to have been made after the inception of the proceedings to set aside the sale, the plaintiffs could not sustain their claim in this case.

We are bound to accept in Second Appeal the finding of the District Judge that the plaintiffs had notice of the application to set aside the sale before they made the improvements and we must deal with the case on that footing. The question of an auction purchaser's right to improvements made by him while in possession as such purchaser and the circumstances under which he would be entitled, if at all, to compensation, is one of considerable importance. No authority, either Indian or English, has been cited to us, nor are we aware of any directly deciding the question. The principle of *caveat emptor* has, in our opinion, no application to this case. It is no doubt well settled that there is no covenant for title implied in a court sale. But this means nothing more than that the auction purchaser takes only the interest in the property sold, which his judgment-debtor had in law at the time of the sale. The scope of the doctrine does not extend to the consequences of defects or irregularities in the proceedings leading up to the sale, which might render it void or voidable.

Section 51 of the Transfer of Property Act, it need hardly be said, is also inapplicable to a purchaser at a court sale. The rights of auction purchasers in execution sales held by courts are favoured by the law in the interests both of the judgment-

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debtors and judgment-creditors. It may be taken to be well established that the reversal of a decree for money, in pursuance of which a sale of the judgment-debtors' property has been held, would not by itself vitiate the sale, except where the purchaser is the judgment-creditor himself. In *Zain-ul-Abdin Khan* v. *Muhammad Asghar Ali Khan*(1) the question was decided by the Judicial Committee of the Privy Council. In that case some of the purchasers were the decree-holders themselves while the others were strangers to the decree upon which execution issued and were *bonâ fide* purchasers. The High Court of Allahabad had dismissed the suit against both sets of purchasers, that is, both those who were the decree-holders and those who were not. But the Privy Council held that "there is a great distinction between the decree-holders who came in and purchased under their own decree, which was afterwards reversed on appeal, and *bonâ fide* purchasers who came in and bought at the sale in execution of the decree to which they were no parties, and at a time when that decree was a valid decree, and when the order for sale was a valid order. A great distinction has been made between the case of *bonâ fide* purchasers who are no parties to a decree at a sale under execution and the decree-holders themselves." The purchases made by the latter class were held good. It is not quite clear whether their Lordships meant to lay down that stranger purchasers in order to be entitled to protection should make their purchases *bonâ fide* or not. Their Lordships refer to a passage in "Bacon's Abridgment," which does not seem to lay down any such requisite. The passage is in these terms: "If a man recovers damages, and hath execution by *fieri facias*, and upon the *fieri facias* the sheriff sells to a stranger a term for years, and after the judgment is reversed, the party shall be restored only to the money for which the term was sold, and not to the term itself, because the sheriff had sold it by the command of the writ of *fieri facias*." The ground of the protection according to this passage is that the sale is held in pursuance of an order of court while that order stands good. Possibly their Lordships meant no more than that purchasers who are no parties to the decree are therefore *bonâ fide* purchasers, as

(1) (1888) I.L.R., 10 All., 166 (P.C.)

opposed to those who are parties to the decree. See *Malkarjun* v. *Narhari*(1). This is apparently the view which has been taken in some of the more recent Indian cases where it was held that third party purchasers cannot be deprived of the fruits of their purchase when the sale is held while the decree stands unreversed. See *Poresh Nath Mullick* v. *Hari Charan Dey*(2).

In the American Cyclopædia of Law and Procedure, volume 22, page 21, the writer of the article on 'Improvements' states the rule to be followed thus: "If one enters upon land under a judgment and order for a conveyance thereof and makes permanent improvements he is entitled to compensation therefor upon a reversal of such judgment and order." It would, in our opinion, be not wrong to hold that the protection of the interests of the judgment-debtors and judgment-creditors alike would be best served by accepting this statement of the rule without any enquiry as to the *bonâ fides* of the purchaser making the improvements, especially when the sale has been confirmed by the court under the provisions of the Civil Procedure Code. But even if the proposition so stated should be regarded as too broad and *bonâ fides* must be proved on the part of the purchaser making the improvements, what is the test of *bonâ fides* required in such cases. The learned vakil for the respondent contends, in accordance with the view of the District Judge, that if the purchaser is put on enquiry regarding the facts leading up to the sale, he is bound to satisfy himself by proper enquiry regarding the true facts of the case. This is no doubt the equitable rule adopted by courts where a person takes a transfer from a limited owner of property acting beyond the limits of his powers of disposition as from a trustee or other person entitled to dispose of property but acting beyond his power. But in our opinion, this test of *bona fides* is not applicable to all cases. The expression means only 'good faith' or 'honesty of dealing.' See section 3, clause (20) of the Indian General Clauses Act, (X of 1897.). In *Kandarpa Nath Ghose* v. *Jogendra Nath Bose*(3) and *Nanjappa Gounden* v. *Peruma Gounden*(4) it was held that the good faith required by section 51 of the Transfer of Property Act did not involve

(1) (1901) I.L.R., 25 Bom., 337 at p. 341 (P.C). (2) (1911) 14 C.L.J., 300.
(3) (1910) 12 C.L.J., 391. (4) (1909) I.L.R., 32 Mad., 530.

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proper enquiry. In the former case MOOKERJEE and TENNON, JJ., held as follows:—"As a general rule, in order to entitle an occupant of land to compensation for improvements, three things must concur. . . . thirdly, he must have acted in good faith, that is, under the honest belief that he has secured good title to the property in question, and is the rightful owner thereof; and for this belief, there must be some reasonable grounds such as would lead a man of ordinary prudence to entertain it. *Stock* v. *Starr*(1). These principles are substantially recognized in section 51, of Transfer of Property Act, and are based on obvious grounds of justice, equity and good conscience. In re *Thakur Chunder Paramanick*(2). The principle is, as Mr. Justice STORY put it in his classical judgment in *Bright* v. *Boyd*(3, which has been followed by this Court in *Dharma Das Kundu* v. *Amulyadhan Kundu*(4) that no man should be allowed to enrich himself unjustly at the expense of another, and that consequently where the defendant has made the improvements in good faith as a *bonâ fide* occupant of the land, and in the belief that the land is his own, the plaintiff who obtains the benefit of expenditure which has increased the value of the property, ought to reimburse the defendant for the expenditure so made." The learned Judges observe later on "No doubt, ordinarily, the privileges of a holder of property in good faith, cease when he has knowledge or notice of an existing title adverse to that under which he claims, but in the present case, that principle is inapplicable, because there was a substantial question in controversy as to the true effect of a testamentary instrument of an ambiguous character, and the occupant ought not to be held disentitled to compensation for improvements, unless they have been made after an adverse decision against him." It will be observed that the claimant of compensation did not derive his title in that case through any act of a Court. The position of one who does so ought, in our opinion, to stand on a superior footing. In the Madras case—*Nanjappa Gounden* v. *Peruna Gounden*(5)—, MUNRO and ABDUR RAHIM, JJ., laid down the same rule. Theys ay "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

(1) (1870) 1 Sawyer 15, 22; s.c. (India) Fed. Cases, 1084.
(2) (1886) Beng. L.R., 595 (F.B.),
(3) (1841-1843) 1 Story 478.
(4) (1906) I.L.R., 33 Calc. 1119.
(5) (1909) I.L.R., 32 Mad., 530.

investigating the title." The right of a purchaser under a judicial sale to the cost of improvements made by him has been dealt with by Freeman in his book on "Void Judicial Sales." He refers to the case of *Valle's Heirs* v. *Fleming's Heirs*(1). Judge NAPTON in his 'opinion' in that case rested himself mainly upon the great judgment of STORY, J., in *Bright* v. *Boyd*(2), where a person who had been evicted from land which he had held by a conveyance from an administrator on the ground that the administrator had failed to comply with the requirements of law essential to the validity of sale, filed a bill for the recovery of valuable and permanent improvements made by him in good faith believing that the deed from the administrator conveyed a good title to the premises. Justice STORY "after great deliberation and research" gave the complainant the relief prayed for in the bill, and, in the absence of any statutory provision on the subject, held the broad doctrine that a *bonâ fide* purchaser for a valuable consideration, without notice of any defect in his title, who makes improvements and meliorations upon the estate, has a lien or charge thereon for the increased value which is thereby given to the estate beyond its value without them, and a Court of Equity will enforce the lien or charge against the true owner, who recovers the estate in a suit at law against the purchaser. Judge NAPTON observed that it was quite immaterial whether this was done by paying off incumbrances, or by making permanent and valuable improvements. In either case the value of the inheritance is increased by the expenditure, and, as already observed, the plainest principle of justice demands that the heir or devisee should repay the money thus innocently expended for his benefit, to the extent that he has been benefited thereby. The opinion of Judge STORY in *Bright* v. *Boyd*(2) is exceedingly learned and able, and will well repay careful perusal and study. He traces the principle which he applied there to the Roman Law, and shows that it has been adopted into the laws of all modern nations which derive their jurisprudence from the Roman Law and demonstrates, by reference to the writings of Cujacius, Boththeir, Grotius, Bell, Puffendors, Rutherforth and others, and by arguments which seem conclusive of the question, that such principle has the highest

(1) (1859) 77 Am. Dec., 557; S.C. 29, Mo. 152.
(2) (1841—1843) 1 Story, 478.

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and most persuasive equity, as well as common sense and common justice for its foundation.

The principle enunciated by Justice STORY and adopted in the American Courts commends itself to us as eminently reasonable and we adopt it. The writer of the article on "Judicial Sales" in the American Cyclopædia of Law and Procedure, volume 24, page 70, states the law thus :—"It is generally held that when the proceedings are invalid, so that the purchaser loses the land, title to which he would have had but for the defects in the proceedings, he is entitled to recover back the purchase money paid by him, and to be reimbursed for money expended by him for taxes and on repairs and improvements that have increased the value of the land." It will be noticed that good faith is not said to be required in the passage though the succeeding statement relating to the purchaser's right to subrogation seems to require good faith in the purchaser to entitle him to the amount of liens on the property discharged by him. See also Moyle's 'Institutes of Justinian,' page 209.

We feel satisfied at any rate that the good faith required does not go beyond an honest belief in the purchaser in the validity of his title. The District Judge does not find that the purchaser was wanting in good faith in this sense, but he applied a wrong test by holding that the purchaser was bound to make due enquiries regarding the regularity of the proceedings. The third defendant did not show or even allege in her written statement that the plaintiffs were aware of the fact that notice of the execution proceedings was not served on the guardian *ad litem*.

We hold, for the reasons mentioned above, that the plaintiffs were entitled to recover compensation for the improvements made by them. With regard to the value of the improvements the District Judge concurs with the finding of the District Munsif.

The decree of the District Judge must therefore be reversed and that of the District Munsif restored with costs both here and in the lower Appellate Court.