SOMAYAJULU v. SEETHAYYA.

SCHWABE, C.J.

hold that the grant of this agraharam village was a grant of both the kudivaram and melwaram, and that consequently it is not an estate within the Madras Estates Land Act, and that the civil courts have jurisdiction to try these cases.

The appeals are therefore allowed, the suits being remanded for admission of the plaints in the District Munsif's Court and disposal according to law. Costs in this Court and the District Court will be paid by the respondents. Costs to date in the District Munsif's Court will be in his discretion and be provided for in the decree to be passed.

OLDFIELD, J. OLDFIELD, J.—I agree.

COUTTS TROTTER, J. COUTTS TROTTER, J.—I agree.

M.R.H.

APPELLATE CIVIL.

Mr. Justice Oldfield and Mr. Justice Devadoss.

1922, October, 26.

JAMBAPURAM SUBBIAH AND TWENTY-NINE OTHERS (DEFENDANTS), APPELLANTS,

v.

GUNDLAPUDI ALIAS MITTA MUDIVENKATRAMAYYA (PLAINTIFF), RESPONDENT. *

Tenants-in-common—Compensation for improvements by one—Whether and when payable.

On a partition between tenants-in-common, one tenant-in-common will not be entitled to compensation from the others for improvements effected by him on the common property, unless they were either necessary or made with the concurrence of the others. *Swan* v. *Swan*, (1820) 8 Price, 518, followed. *Upendra Nath Banerjee* v. *Umes Chunder Banerjee*, (1910) 12 C.L.J., 25, not followed.

* Second Appeal No. 816 of 1921.

SECOND APPEAL against the decree of C. V. SAMPATH AYYANGAR, Subordinate Judge of Cuddapah, in Appeal Suit No. 16 of 1920 (Appeal Suit No. 163 of 1918 of the District Court), preferred against the decree of M. VENKATARAMAYYA, Acting District Munsif at Proddatur, in Original Suit No. 21 of 1917. SUBBIAH v. GUNDLAPUDI.

The facts appear from the Judgment.

T. R. Arunachala Ayyar for *S. Varada Achariyar* for appellants.—The defendants who are tenants-in-common are entitled to compensation for the improvements effected by them on the common land. *Upendra Nath Banerjee* v. *Umes Chunder Banerjee*(1).

K. Kamanna (with *P. Narayanamurti*) for respondent.—The defendants have taken no such issue ; hence it cannot be allowed. Moreover one co-tenant is not entitled to compensation for improvements unless he proves the consent of others thereto or necessity ; neither is proved in this case ; *Swan* v. *Swan*(2), *Leigh* v. *Dickeson*(3), *In re Jones, Farrington* v. *Forrester*(4), which are relied on in *Upendra Nath Banerjee* v. *Umes Chunder Banerjee*(1), do notsupport the wide form in which the proposition is stated.

The JUDGMENT of the Court was delivered by OLDFIELD, J.

OLDFIELD, J.—Some argument was addressed to us on behalf of the defendants, appellants, with reference to the calculations, on which the lower Court's judgment is based. We have not, however, been shown how any question of law is raised in connexion with their correctness and we therefore decline to interfere with the conclusions, in which those calculations result.

The remaining ground on which the appeal is argued is against the lower Appellate Court's refusal to make

(1) (1910) 12 C.L.J., 25.
(2) (1820) 8 Price, 518.
(3) (1885) 15 Q.B.D., 60.
(4) [1893] 2 Ch., 461.

SUBBIAH v. GUNDLAPUDI. — OLDFIELD, J.

any provision in its decree for an award to the defendants on account of the improvements they allege they have made on the suit property. The suit property is part of a larger area in common ownership of the plaintiff and the defendants. The plaintiff let his unascertained share to the defendants ; and the present suit is brought for the eviction of the defendants from that share, the form of the decree being of course a decree for partition by metes and bounds of the plaintiff's share and delivery to him of possession thereof. It cannot, therefore, at present, be said that the improvements are on the portion of which the plaintiff will be entitled to delivery. But in any case we cannot see how one tenant-in-common, who makes improvements on the property of the co-tenancy, can ordinarily be entitled to compensation for doing so. The defendant's argument has been based on the dictum of MOOKERJEE, J., in *Upendra Nath Banerjee* v. *Umes Chunder Banerjee*(1),

"If one joint owner has in good faith effected valuable improvements upon the common property at his own expense, equity will take this fact into consideration upon a partition and in some way will make an allowance to him therefor, in addition to his rateable share of the property."

The learned Judge has proceeded to explain the nature and the grounds of this equity ; but we prefer to decide whether any such principle as that relied on by him is really recognized by authority. Certainly it is not recognized in the unqualified form, in which he stated it in the cases referred to in his judgment. In *Swan* v. *Swan*(2), the Court ordered a reference for an account to be taken of what had been expended by a co-tenant necessarily or with the concurrence of the other co-tenant ; and these qualifications were fully recognized in *In re Jones*,

(1) (1910) 12 C.L.J. 25. (2) (1820) 8 Price, 518.

Farrington v. *Forrester*(1). No doubt the reference in that case to the observations of COTTON, L.J., in *Leigh* v. *Dickeson*(2) is at first sight in favour of the existence of a general right in one co-tenant to compensation for improvements made by him against another. But the judgments of BRETT, M.R., and of the other learned Judge in *Leigh* v. *Dickeson*(2), amply sustained the right as subject to proof of the necessity for repairs or improvements or of the co-tenant's concurrence, express or implied, in their execution. The portion of the judgment of COTTON, L.J., to which reference has been made, appears, on a perusal of his judgment as a whole, to be concerned solely with procedure, that is, with the existence of a remedy in equity by a partition suit, which the common law could not afford. In the present case defendants have never, in their written statement or elsewhere, alleged the plaintiff's concurrence, expressed or implied, in what they did ; and no issue on the point was framed or even asked for. In these circumstances this objection to the lower Appellate Court's decree must fail.

The Second Appeal is therefore dismissed with costs, including costs of Civil Miscellaneous Petition No. 2483 of 1921.

N.R.

(1) [1893] 2 Ch., 461. (2) [1885] 15 Q.B.D., 60.