

Present : Bertram C.J. and Ennis J.

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DAVITH APPU v. BAHAR.

232—D. C. Tangalla, 2,077.

Compensation for improvements—Rights of a person who improves land of another on informal agreement—Jus retentionis.

Semble, a person who effects improvements on a land belonging to another on an informal agreement (subsequently repudiated) is entitled to compensation for improvements.

“ It certainly extends the doctrine of the rights of a *bona fide* possessor to compensation for improvement and is thus a development of the law.”

PLAINTIFF sued the defendant for the recovery of Rs. 2,700 compensation due for converting an area of 17 acres of the defendant's jungle land into a paddy field.

Defendant admitted that he entrusted the work to the plaintiff and another on an informal writing, but denied that the plaintiff or the other contractor carried out the said agreement, and claimed that the work was done by a third party at the defendant's expense. The District Judge held that plaintiff had not proved that he effected the improvement, and dismissed the action.

The plaintiff appealed.

Soertsz, for appellant.

M. W. H. de Silva, for respondent.

January 15, 1923. BERTRAM C.J.—

This was an action in which compensation was claimed for improvements said to have been executed on the basis of an informal agreement subsequently repudiated. Evidence was given by the plaintiff to the effect that the improvements were in fact done. His evidence certainly might have been more definite, and it might have been more fully supported. The learned Judge has regarded the evidence of the plaintiff with suspicion, and considers that the evidence called in support of the plaintiff cannot be relied upon. He has, therefore, not called upon the defendant for his case. The learned Judge's suspicion may be well founded. I cannot help feeling, however, that it would have been very much better if he had heard the whole case before coming to his conclusion.

The case set up by the defendant was that the informal agreement was never acted upon ; that the plaintiff, having lost his partner who

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was a party to the agreement, never executed any improvements ; that the improvements were taken in hand by somebody else under another agreement ; and that this action is brought in bad faith in conjunction with the plaintiff's principal witness, Mendis Silva. This case was not put at all fully or specifically to the plaintiff in cross-examination. I find it impossible to say that a *prima facie* case at least has not been made out. I think, therefore, that the case should go back to be fully heard, and as the learned Judge appears to have formed so definite an opinion, it would be better that it should be heard by another Judge. I would, therefore, remit the case for this purpose.

With regard to the question of law, which, if the Court finds in favour of the plaintiff, will have to be considered, all I need say at the present moment, is this. It was held on the very high authority of Pereira J. in *Mohamadu v. Babussa* ¹ that a person who has made improvements upon a land with the leave and license of the owner is entitled to the *Jus retentionis* and all the other rights of a *bona fide* possessor. That case has been cited with approval in a recent judgment of this Court, D. C. Kandy, 29,879. ² It certainly extends the doctrine of the rights of a *bona fide* possessor to compensation for improvements, and is thus a development of the law. It may be one of those developments to which I referred in *Government Agent, Central Province, v. Letchiman Chetty*. ³ There is no occasion to deliver a final judgment on this question of law in the present case, as the Court may find in favour of the defendant. If the Court finds in favour of the plaintiff, it will have to consider the authorities I have cited, and it would also do well to consider another case cited by Mr. de Silva (*Mudanayake v. Marikar*). ⁴

I would, therefore, make the order I have indicated, and would direct that the costs of the appeal should be costs in the cause.

ENNIS J.—I agree.

Sent back.

¹ (1912) 2 Court of Appeal Cases.

² (1923) S. C. M. June 29.

³ (1922) 24 N. L. R. 36.

⁴ (1919) 6 C. W. R. 7.