

1908.
July 7.

Present: Mr. Justice Wood Renton and Mr. Justice Grenier.

G. A., W. P., v. COORAY *et al.*

D. C., Colombo, 2,235.

Land acquisition proceedings—Claim for damages and compensation for improvements—Lessees—Intervention—Ordinance No. 3 of 1876.

Where in a land acquisition case the lessees of two of the claimants were allowed to intervene and to claim compensation for improvements effected by them and damages consequent on the determination of the lease before the expiration of the stipulated period—

Held, that the intervention was wrongly allowed, and that it was not competent for the lessees to claim compensation or damages in these proceedings.

A PPEAL from a judgment of the District Judge of Colombo. The facts sufficiently appear in the judgment of Grenier A.J.

Van Langenberg, for the claimants, appellants.

F. M. de Saram, for the respondents.

Cur. adv. vult.

July 7, 1908. GRENIER A.J.—

This was a land acquisition case, on which has been grafted an action for compensation in respect of certain improvements alleged to have been made by the lessees of two of the claimants, and for damages in consequence of the lease having been determined before the expiration of the term agreed upon. I have read through the whole of Ordinance No. 3 of 1876, but I cannot anywhere find in it any provision for a claim of this description. One of the primary objects of the Ordinance was to afford a speedy settlement of claims to money brought into Court by the Government Agent as representing the value of the land acquired; and the Ordinance was certainly not intended to provide for claim of the nature preferred by the intervenients, who are the lessees, being adjudicated upon in any proceedings under it. The Government Agent brought the sum of Rs. 13,000 into Court, and all the claimants, five in number, were agreed that the compensation so tendered was sufficient and proper compensation to be allowed for the acquisition of the land and premises in question. It was stated in the libel of reference by the Government Agent that the property was subject to a *fidei commissum*, and at the trial, which took place in this case as between the intervenients and the claimants, it was admitted that the deed No. 2,816 dated October 3, 1890, created a valid *fidei*

commissum over the premises in dispute. There was no question amongst the claimants themselves either in regard to the sufficiency of the compensation or its appropriation amongst themselves; but it would appear that the first and second claimants, without the authority of the other claimants, had executed a lease in favour of the intervenients of the whole of this property for a term of three years, commencing from June 1, 1904. The lessees were allowed to intervene in the case and claim a sum of Rs. 849 out of the compensation of Rs. 13,000. Considering that this latter sum represented the property itself, and was subject to a *fidei commissum* in the same manner that the property itself had been, I cannot understand how the intervenients were allowed a status in the case, and why no objection was taken and pressed at the earliest opportunity against their intervention. If the intervenients had any claim against their lessors, the first and second claimants, founded on a breach of any of the covenants of the lease or in respect of any improvements, they should have brought a separate action instead of intervening in these proceedings, in which they could not possibly touch the money in deposit. I find that in the statement filed by all the claimants in answer to the libel of reference by the Government Agent and the statement of claim of the intervenients, an objection was taken that it was not competent to the intervenients in this action to claim damages, if any, payable to them by the first and second claimants only, or to claim to be paid such damages from the sum in Court, inasmuch as it represented the *corpus* impressed with the *fidei commissum* imposed by the deed I have already referred to, with a right of succession by survivorship, and that even if the intervenients were entitled to claim damages in respect of the said lease from the first and second claimants, such damages could not be paid out of the said sum of Rs. 13,000. In the issues that were framed at the trial I find that the first, second, and third issues ran as follows:—“ *First*.—Did the added claimants erect two buildings on this land, and if so, are they entitled to any part of the compensation deposited in Court? *Second*.—Is the land subject to a *fidei commissum*? *Third*.—If so, are added claimants entitled to claim a portion of the compensation deposited in Court? ” The District Judge has found that the added claimants or intervenients are not entitled to any part of the compensation deposited in Court, on the ground that the land is the subject of a *fidei commissum*. In my opinion there should have been an end of the intervenients’ claim on these findings, but the District Judge proceeded to consider the other issues with reference to the lease, which did not in the slightest degree affect the compensation deposited in Court. To my mind it seems clear that, in the circumstances I have referred to, these proceedings should not have been complicated by the intervenients being allowed to come into the case with a claim on a lease against the first and second claimants.

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It would appear that the lease was prematurely determined by the Crown having acquired the land. The remedy open to the intervenients, when that event happened, was to proceed against their lessors, namely, the first and second claimants, for damages, in that they were not permitted to possess the property demised for the full term of the lease, and for compensation in respect of any improvements they may have made. But certainly there was no foundation whatever for an intervention of this character in these proceedings, especially as the intervenients were not entitled under any circumstances to claim any portion of the money in deposit.

I would set aside the order of the District Judge awarding the sum of Rs. 324 to the intervenients, and dismiss the intervention, with liberty to the intervenients to bring a separate action, if so advised, against the first and second claimants for any damages they may have sustained by reason of any breach committed by the first and second claimants of any of the covenants of the lease or in respect of any compensation for improvements. As between the intervenients and the claimants they will bear their own costs both in this Court and in the Court below. The order of the District Judge will stand with reference to the sum of Rs. 13,000 remaining in Court, subject to the *fidei commissum* created by deed No. 2,816 dated October 3, 1890. The costs of the Government Agent, if any, will be paid by the first and second claimants only, and not by all the claimants, because I think they alone must be held responsible for all this unnecessary and futile litigation.

WOOD RENTON J.—I concur.

Appeal allowed.