

Present : De Sampayo J. and Schneider A.J.

1920.

**KANAPATHYPILLAI v. NAGALINGAM.**

115—D. C. Jaffna, 13,641.

*Partition action—Sale—House built by co-owner—Valuation of house and land by Commissioner—Sale for higher price—Division of proceeds between parties.*

A property which was owned by plaintiff and defendant in equal shares was ordered to be sold under the Partition Ordinance. The Commissioner valued the land at Rs. 600 and the house built by the plaintiff at Rs. 1,500. The property fetched Rs. 3,010 at the sale. The District Judge ordered the proceeds to be divided in the proportion of Rs. 1,800 (Rs. 1,500 + Rs. 300) and Rs. 300.

*Held*, that the value of the improvement (Rs. 1,500) should be deducted from the proceeds, and the balance should be divided equally between the plaintiff and defendant.

*Per DE SAMPAYO J.*—“Under the Partition Ordinance any improvement must be valued according to the expenditure in respect of the improvement, if the improvement is less in value.”

**T**HE facts appear from the judgment.

*A. St. V. Jayawardene* (with him *Croos-Dabrera*), for defendant, appellant.—It was held by the Full Court that a co-owner who makes improvements is entitled either to the amount of the expenditure or the value of the improvements, whichever is less. (*Appuhamy v. Sanchihamy*.<sup>1</sup>) The house built by the plaintiff has been valued by the Commissioner at Rs. 1,500. He is only entitled to draw this sum. The fact that the whole land when sold by public auction realized a bigger sum than the appraised value ought not to make any difference. The learned District Judge has adopted a wrong calculation in awarding compensation for the improvement made by the plaintiff.

*Arulanandan* (with him *Weerasinghe*), for plaintiff, respondent.—The land and house have been valued by the Commissioner at Rs. 2,100. At the sale they realized Rs. 3,010. The presence of the house must have contributed to this sum being realized. The owner of the house should, therefore, benefit by the increased price

September 30, 1920. DE SAMPAYO J.—

I think the District Judge in dividing the fund in Court proceeded upon a wrong basis. This is a partition action with reference to a land which is owned by the plaintiff and the defendant in equal

<sup>1</sup> (1919) 21 N. L. R. 33

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shares. It appears, however, that the plaintiff made certain improvements. The parties on March 24, 1920, agreed that, instead of a partition, the property should be sold, and it was ordered that the property be sold accordingly, and that the house which constitutes the improvement should be separately valued by the Commissioner. The Commissioner appears to have made an appraisalment valuing the improvement at Rs. 1,500, and the land itself at Rs. 600. The whole property would then, according to his valuation, be of the value of Rs. 2,100. But when the land was sold under the decree it realized Rs. 3,010. The question was how this sum of Rs. 3,010 was to be divided between the two parties. The District Judge decided that the parties should divide the money in the proportion of Rs. 1,800 and Rs. 300. Those figures are explained by the original appraisalment by the Commissioner, for according to that the plaintiff would be entitled to Rs. 1,500 for the improvement and Rs. 300 for the land, making altogether Rs. 1,800, and the defendant to Rs. 300 for his share of the land. I think this is an erroneous calculation. The improvement was a fixed quantity. The value of it could not be enhanced or decreased by the accident of any particular price realized at the sale. It is well understood that, even under the Partition Ordinance, any improvement must be valued according to the expenditure in respect of the improvement, or even less, if the improvement is less in value. Therefore, Rs. 1,500 must be taken, in any case, to be the amount of compensation due to the plaintiff for the improvement. That being deducted in his favour from Rs. 3,010, the amount to be divided between the parties would be Rs. 1,510, of this the defendant would be entitled to half, namely, Rs. 755. I think, therefore, the order appealed from should be modified by declaring the plaintiff entitled to Rs. 2,255, and the defendant to Rs. 755. The defendant is entitled to the costs of this appeal.

SCHNEIDER A.J.—I agree.

*Varied.*