1913.

Present: Lascelles C.J. and Pereira J.

PERERA *v.* PELMADULLA RUBBER AND TEA CO. *et. al.*

22—D. C. Ratnapura, 1,873.

Co-owner—Right to compensation for improvements effected by him—Is bona fide *possessor obtaining a certificate of quiet possession entitled to compensation from owner?—Ordinance No 12 of 1840, s. 7.*

A co-owner building on common property has no larger rights to compensation than a *bona fide* improver of property which was not his own. He is entitled to either the value of the improvements, that is, to the difference between the original and the enhanced value of the property, or to the costs of improvements, whichever is less.

A *bona fide* possessor paying a sum of money to the Crown for obtaining a certificate of quiet possession was held not entitled to claim that sum as compensation for improvements from the owner of the land.

LASCELLES C.J.—There can be no objection as to the advantage of paying off a mortgage on a property, but the advisability of obtaining a certificate of quiet possession may vary according to circumstances and the position of the owner ..... Ordinance No. 12 of 1840 lends no sanction to the curious system which seems to have grown up of practically selling the land at a fixed rate per acre and then issuing a certificate of quite possession instead of a Crown grant.

Per PEREIRA J.—The expression "value of improvements" in section 5 of the Partition Ordinance means what the party who has effected the improvements is, in law, entitled to receive as compensation for the improvements.

IN this case the plaintiff sought to partition a land called Galandepelapanguwa, in extent about 100 acres, which consisted of several chenas, and which formed part of Rilhene estate, which belonged to the defendant company.

The learned District Judge (Allan Beven, Esq.), after discussing the facts, made the following order:—

The value of the rubber is estimated at Rs. 250 to Rs. 400 an acre, but I doubt whether the first defendant company can claim that sum. A *bona fide* possessor is not entitled to claim more than was actually expended, but may include the value of labour in such expenditure (*1 C. L. R. 22*). I put this down roughly at Rs. 100 an acre on Mr. Hawkin's evidence. The plaintiff will therefore have to pay at that rate per acre, plus his proportionate share for the certificate of quiet possession, before he enters into possession of his 10/18.

I understand some 8 acres have been set aside, unplanted, for the second minor defendant. If, however, there is to be a partition, he must come in and pay equally if his guardian *ad litem* wishes to have his share from the planted portion, but the Commissioner appointed to divide the land will, as far as possible, apportion to him the portion unplanted for his share.

Enter an interlocutory decree for partition as follows:—Plaintiff to 10/18ths of the land; first defendant company to 7/18ths; the second defendant to 1/18th.

The Commissioner in partitioning the land will estimate the planted portion at Rs. 100 an acre, at which rate plaintiff will have to pay first defendant company for his share (viz., 10/18) before he can enter into possession, plus his proportionate share of Rs. 1,000 for the certificate of quiet possession.

The second minor defendant to get 1/18th of the land from the unplanted portion.

As regards costs, I think the fairest order would be that each party should bear its own costs, because if plaintiff has won on the question of title, the first defendant company is entitled to the cost of proving his right to compensation.

Costs of partition will be borne *pro rata*.

The first defendant company appealed.

The plaintiff-respondent filed a statement of objections under section 772 of the Civil Procedure Code.

De Sampayo, K.C., for first defendant, appellant.

A. St. V. Jayewardene, for plaintiff, respondent.

Cur. adv. vult.

May 14, 1913. LASCELLES C.J.—

* * * * *

Then it is said that the learned District Judge was wrong in estimating compensation, on the footing that the first defendant-appellant is not entitled to claim more than was actually expended on the improvements. But the judgment in this respect is in accordance with the principles laid down by this Court. In *Silva v. Babunhamy* [1] this Court was not prepared to hold that a co-owner building on common property had any larger rights to compensation than a *bona fide* improver of property which was not his own. The right of the latter is to either the value of the improvements, that is, to the difference between the original and the enhanced value of the property, or to the cost of the improvements, whichever is less. In this connection I may note that English Courts of Equity, in partition actions, have followed the same principle. The allowance to which the improving co-owner is entitled extends to the amount by which the value of the property, estimated at the commencement of the action, has been increased, not exceeding

[1] *(1912) 16 N. L. R. 48.*

1913.

LASCHELLES C.J.

Perera v. Pelmadulla Rubber and Tea Co.

the amount expended (*Watson v. Gass*,[1] *Re Jones Farrington v. Forrester*[2]). I do not think that any exception can be taken to the decision on this ground.

I now proceed to deal with the plaintiff-respondent's cross objections. He objects, in the first place, that the compensation payable by the plaintiff should be restricted to the 97 acres planted before the receipt of the letter P 3 dated February 6, 1911. The contention is that the first defendant, after the receipt of that letter, ceased to be a *bona fide* possessor. This letter was addressed to Mr. Hawkins by Mr. Gunawardene, on behalf of the plaintiff-respondent, stating his client's claim to 11/18th shares in the land, and gives notice to Mr. Hawkins not to plant the whole of the panguwa. The plaint in the action was filed on February 24, 1911. It is thus not very material whether the date of the letter or the date of the institution be taken as the point when the plaintiff ceased to have the rights of a *bona fide* possessor, for it is clear that he cannot claim any allowance for improvements effected after *litis contestatio*. The compensation, I think, should be limited to improvements made before this date.

Next, the plaintiff-respondent objects to being called on to pay compensation for his share of the Rs. 1,000 paid for the certificate of quiet possession. It is contended by the plaintiff-respondent that his position is analogous to that of a possessor who has paid off an encumbrance; that he has improved the land; and that the true owner is not entitled to have the benefit of this improvement without paying for it. I do not think that there is any true analogy between the two cases. In the one case the possessor frees the land from a charge which is enforceable at law; he confers an unquestionable benefit upon future owners of the property. But a certificate of quiet possession affords protection against a merely contingent danger, against a claim which possibly may never be set up by the Crown. There can be no objection as to the advantage of paying off a mortgage on a property, but the advisability of obtaining a certificate of quiet possession may vary according to circumstances and the position of the owner. What is to the advantage of a joint stock company is not always necessary or useful to a private owner.

But there is another consideration. The purchase of a certificate of quiet possession at a fixed price per acre is a proceeding unwarranted by law. Under section 7 of Ordinance No. 12 of 1840, if the Government Agent is satisfied on investigation that the Crown has no claim to this land, it is his duty, with the consent of the Governor, to grant a certificate to that effect. If the Crown has no claim to the land, the applicant becomes entitled *ex debito justitiæ* to the certificate. On the other hand, if the Crown has any claim to the property no certificate should be given. The Ordinance lends

[1] (1881) 51 *L. J. (Ch.)* 480.

[2] (1893) 2 *Ch.* 461.

no sanction to the curious system which seems to have grown up of practically selling the land at a fixed rate per acre and then issuing a certificate of quiet possession instead of a Crown grant.

I think that the plaintiff is not chargeable with any part of the cost of these proceedings.

The remaining cross objection is with regard to costs. The plaintiff-respondent contends that he should not have been deprived of the costs of the contest. In view of the plaintiff's delay in coming forward with his claim, I would not disturb the order as to costs.

In the result the appeal should be dismissed with costs; but the decree should be modified (*a*) by directing the Commissioner, in estimating compensation, to exclude any land planted after February 7, 1911, and by deleting so much of the decree as orders the plaintiff to pay his proportionate share of the Rs. 1,000 paid for the certificate of quiet possession.

PEREIRA J.—

I agree, and I would add that under section 5 of the Partition Ordinance the Commissioner appointed to make a partition has to do so with reference, *inter alia*, to the value of any improvements made on the property to be partitioned. In my opinion this expression—" value of improvements "—means no more than what the party who has effected the improvements is, in law, entitled to receive as their value. In the case of a *bona fide* possessor, what he is entitled to receive as the value of improvements effected by him is the amount by which the value of the whole property on which the improvements have been effected has been enhanced by reason of the improvements, or the actual expenditure incurred in effecting the improvements, whichever is less. In the circumstances of this case, the first defendant is in the position of such a possessor.

Appeal dismissed; cross appeal allowed.