

1963 Present : Sansoni, J., and L. B. de Silva, J.

ABIDEEN HADJIAR, Appellant, and **AIYSHA UMMA** and
others, Respondents

S.C. 16/61 (Inty.)-D. C. Matale, 600/P

Compensation for improvements-Improvements effected on immovable property for the benefit of the owner of the property-Bight of improver to claim compensation- Principle of unjust enrichment-Scope.

Compensation for improvements effected on immovable property cannot be claimed by the improver if they were effected by him for the benefit of the owner of the property. In such a case, the principle of unjust enrichment has no application.

The 2nd defendant effected, at his own expense, certain improvements on his wife's property. When, after the death of the wife, one of her heirs instituted a partition action in respect of the property, the 2nd defendant claimed compensation for the improvements. He admitted in his evidence that he effected the improvements in the interests of his wife and children.

Held, that the 2nd defendant was not entitled to claim compensation inasmuch as the improvements were effected by him for the benefit of the owner of the property.

APPEAL from an order of the District Court, Matale. C. Ranganathan, for the Plaintiff-Appellant. N. R. M. Daluwatte, for the 2nd-7th Defendants-Respondents.

Cur. adv. vult.

March 20, 1963. **L. B. DB SILVA, J.-**

One Ajibanoon was entitled to the two properties in suit upon deed No. 681 of 1945 (P2) from her mother Aysha Umma. She died leaving as her heirs her father, the plaintiff, her mother, the first defendant, her husband the 2nd defendant and her children the 3rd to the 7th defendants. The parties are governed by the Muslim law and there is no dispute to the title to this land. The plaintiff is seeking a sale of the land under the Partition Act.

The second defendant is seeking compensation for improvements effected by him to the two houses on the said lands. These improvements were effected when 2nd defendant's wife was the owner and when she was alive. The 2nd defendant is claiming compensation only from the plaintiff and the 1st defendant and has waived his claim, as against his children. The learned District Judge has held that the 2nd defendant has effected considerable improvements to the two houses that existed on these two lands at his own expense. It is not necessary for the purposes of his appeal to consider the correctness of that finding though he has erred on an important point in arriving at his decision.

The 2nd defendant admitted in his evidence that he effected the improvements in the interests of his wife and children. He is making his present claim because his wife had since died and certain shares have devolved on her parents.

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In the case of *Hasscmally v. Gassim*[1 (1960) 61 N L. R. at p. 532.], Viscount Simmonds stated in the -Privy Council, " the right of the improver to compensation rests on the broad principle that the true owner is not entitled to take advantage, without making compensation, of the improvements effected by one who makes them in good faith believing himself to be entitled to enjoy them whether, for a term or in perpetuity ".

He also cited with approval the following passage from Wille's " Principles of South African Law ", 4th edition at page 479 : "A very common application of the doctrine of unjust enrichment occurs in cases where improvements or additions to landed property have been made,, without the express or implied consent of the owner of the property, by & person in possession of the property. A person who expends money or labour in improving property with the intention of doing so for his own benefit whereas in fact he had no right or title to the property, in consequence of which the improvements are acquired by the owner of the property by virtue of accession is entitled to claim from the latter the amount by which the property has been enhanced in value ".

The principle of unjust enrichment has no application where the improver effected the improvements for the benefit of the owner. The essence of a claim for compensation is that the improver expected to enjoy the benefit of the improvements for a term or in perpetuity. In this case, apart from any presumption of advancement in favour of the wife, the 2nd defendant has expressly stated that he effected the improvements in the interests of his wife and children, that is, for their benefit. He cannot-put forward his claim after the death of his wife when he had no intention at the time he effected the improvements, to make any such claim against his wife.

The 2nd defendant's position is no different even if he effected the improvements "with the express or implied consent of his wife, the owner., because he did so for her benefit.

Counsel for the 2nd defendant-respondent urged that the 2nd defendant was entitled to claim compensation on the footing that he has effected, useful improvements to total property during the pendency of the; marriage. He relied on " The Selective Voet-the Commentary on the Pandects ", translation by Percival Gane-Volume 4, p. 341, Book XXV, Title 1. The translator notes that no instance has been noticed of this title ever having been quoted in a South African judgment, though it has been approved at one point in a legal writing.

Counsel pointed out that the deed P2 was executed on the day of the marriage between the 2nd defendant and his wife Ajibanoon and the

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marriage certificate D4 refers to the land conveyed on the deed P2 under the cage " Amount of Stridanam ". Stridanam was a gift to a woman on the occasion of her marriage.

The claim by the 2nd defendant for compensation for improvements was not put forward in the trial Court on the basis of a claim to compensation for beneficial improvements to dotal property under Roman Dutch Law. Many other questions of fact and law may have arisen for consideration if the claim to compensation was based on this footing in the trial Court. We regret that we cannot consider the 2nd defendant's claim to compensation on the basis put forward by his Counsel in

this appeal.

We accordingly allow this appeal with costs and set aside the award in the decree in favour of the 2nd defendant for compensation for improvements.

SANSONI, J.-I agree.

Appeal allowed.

- End -