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Court : Kolkata

Decided On : Jan-28-1954

Reported in : AIR1954Cal345,58CWN760

Judge : G.N. Das, J.

Acts : [Transfer of Property Act, 1882](#) - Section 51

Appeal No. : A.F.A.D. No. 194 of 1949

Appellant : Bimal Chandra Das and ors.

Respondent : Manmatha Nath Das and ors.

Advocate for Def. : Bhutnath Chatterjee, Adv.;Shambhu Nath Banerjee, Adv.

Advocate for Pet/Ap. : Nalini Ranjan Bhattacharyya, Adv.

Judgement :

G.N. Das, J.

1. This is an appeal by the plaintiffs against the concurrent judgments of the courts below. The question which now awaits my decision is a narrow one, namely the decision of issue No. 7 which runs as follows: 'Is the defendant entitled to get any compensation for improvement effected? If so, what?' This issue arose under the following circumstances.

The disputed property belonged to one Gopal Das. Gopal Das died leaving a widow Charubala, a son Satya Charan and three daughters Mrinalini, Kali Rani & Chapala. On the death of Gopal Das the property devolved on his son Satya Charan. Satya Charan having died the estate devolved on Charubala. Charubala, by three documents executed on the same date, namely, 22-5-1926, parcelled out the entire estate amongst her three daughters. Charubala died later in Bhadra, 1343 B.S.

The plaintiffs claim to be the reversioners to the estate of Satyacharan on Charubala's death. The contesting defendant is the son of Haridasi the purchaser of the disputed property in execution of a mortgage decree against Mrinalini. The plaintiffs as reversioners prayed for possession. The contesting defendant raised a plea which formed the subject-matter of issue No. 7, namely, whether the defendant is entitled to compensation for repairs effected by the defendant after the auction-purchase.

2. Both the courts below have answered issue No. 7 in favour of the contesting defendant and have directed that the plaintiffs do get possession on payment of a compensation of Rs. 300/- to the contesting defendant (defendant No. 1).

3. It is the propriety of this decision which is the subject-matter of this appeal. In order to dispose of this contention it is necessary to state the material findings of fact reached by the Courts below.

The auction-purchase took place on 20-2-1932. It is not clearly found when the alleged repairs were effected. The finding merely is that the defendant effected repairs so as to make the rooms fit for use and that the repairs were spread over a period of 2 to 3 years. The Courts below have assessed the amount of repairs at a lump sum of Rs. 300/-. The learned Subordinate Judge who heard the appeal further found that the auction-purchaser (Haridassi) apparently auction-purchased, the property in the bona fide belief that Mrinalini was the full owner and that she derived an absolute title by the purchase and that after the auction-purchase, Haridassi effected substantial repairs in the property and the plaintiffs are equitably bound to pay compensation to the defendant before they get possession.

4. The question is whether the view taken by the Courts below can be sustained. Mr. Bhatta-charyya, learned advocate, appearing on behalf of the appellants submitted before me that the claim for repairs could be admissible only under Section 51, T. P. Act but contended that Section 51, T. P. Act had no application for a variety of reasons.

Mr. Chatterjee who appeared on behalf of the respondents on the other hand did not rely on the terms of Section 51, T. P. Act, but submitted that on equitable grounds the contesting defendant is entitled to compensation for repairs.

5. Unquestionably before the passing of the Transfer of Property Amendment Act, 20 of 1929, Section 2 provided that nothing in the Second Chapter of the Transfer of Property Act shall be deemed to affect any rule of Hindu and Muhammadan Law. Section 3 of the Transfer of Property (Amendment) Act 1929, omitted the word 'Hindu' with the consequence that since the amendment, Second Chapter of the T. P. Act which includes Section 51 thereof applies to Hindus.

In this case the auction-sale took place in 1932 and although there is no clear finding by the courts below, the repairs took place some time thereafter. It is, therefore, permissible to advert to the provisions of Section 51, T. F. Act. That section entitles a transferee of immovable property who has made any improvement on the property believing in good faith that he is absolutely entitled thereto, to claim compensation in the shape of the estimated value of the improvement from the plaintiff in case of his eviction. The first condition' therefore which must be satisfied by the claimant for compensation is that he must be a transferee of the immovable property. Mr. Bhattacharyya has contended that the word 'transferee' does not include a purchaser in execution of a mortgage decree which Haridassi was.

The word 'transferee' in the several sections which precede Section 51 has been construed in some decisions of this Court to include a mortgagee auction-purchaser. For instance, Section 44 was applied to such a mortgagee auction-purchaser in the case of -- 'Jagatbandhu Biswas v. Iswar Chandra' : AIR1948 Cal61 . But even if we assume that the word 'transferee' in Section 51 includes only a voluntary transferee, the principle underlying Section 51 will govern the

present case. In either view before the claimant can claim compensation he, must believe in good faith that the transferor whose interest he was purchasing was absolutely entitled to the property.

In the case of -- 'Abhoy Churn Ghose v. Attar-moni Dassee' 13 Cal W N 931 (B), Stephen J. while explaining the expression 'in good faith' in Section 51, T. P. Act observed as follows: 'There is nothing to show that the defendant acted otherwise than in what is commonly understood as good faith, that is, honestly and fairly. But a belief in good faith must mean something more than this. There seems to be no authority as to what constitutes a belief in good faith under this section; but, I think, the expression must include a due enquiry.' In the case of -- 'Kandarpa Nath v. Jogendra Nath' 12 Cal L J 391 (C), it was observed that

'as a general rule, improvements made on property by a life-tenant thereof, attach to the estate and pass to the reversioner or remainderman, at the expiration of the life-estate, without any liability on his part to make compensation therefor. The same is true of improvements made by a purchaser from one who holds a limited interest, for, it is presumed that such purchaser knows the title which he acquires.'

If we apply the above principles to the facts of this case, it is fairly clear that if the mortgagee from Mrinalini had made enquiries, he would have been able to discover the infirmity of the title of Mrinalini. It is therefore difficult to say that the mortgagee believed in good faith that Mrinalini was absolutely entitled to the property of which a mortgage was being taken. But even if we assume that the mortgagee acted in good faith and believed that Mrinalini was absolutely entitled to the property, a question still remains whether the alleged repairs constituted improvements within the meaning of Section 51, T. P. Act. The word 'improvement' obviously connotes an idea of permanence, namely, some permanent benefit which would accrue to the reversioner or remainderman,

6. Mr. Chatterjee appearing for the respondents placed reliance on the case of -- 'Kidar Nath v. Mathu Mal' 40 Cal 555, (P. C.) (D). The Judicial Committee in that case observed that in their opinion the grounds upon which the Chief Court proceeded are sound. Before the Chief Court the alleged improvements effected by the defendants were considered under four heads: (i) the value of a temple

estimated at Rs. 2,700; (ii) the building of a well said to have cost Rs. 300; (iii) the building of an upper storey to the house, valued Rs. 2,500; and (iv) repairs to the house, valued at Rs. 1,500. In dealing with the claim for the improvements under the four heads, the Chief Court observed as follows:

'There is no evidence whatever to show that plaintiff knew of, or acquiesced in, the making of any of these so called improvements, and as defendant had purchased from a widow, whose estate he must be taken to have known was of a limited nature, it is not unreasonable to hold that any improvements effected by him were done at his own risk.....

The repairs, again, were effected some 15 years before suit, and we cannot agree that plaintiff should be made to pay the full amount said to have been expended by defendant in effecting these repairs. For all these years defendant has had the benefit of the property and of the repairs made by him, and a very considerable deduction would have to be made for depreciation by reason of ordinary wear and tear.

Upon the whole, we think that if plaintiff is made to pay a reasonable sum as compensation to the defendant for his expenditure upon the upper storey and the well (i.e. a sum of, say, Rs. 1,400, which represents half the expenditure thereon by defendant), no further demand can reasonably be made upon him. As regards the temple, we think that upon the principle laid down in, -- '*Fremji Jivan v. Cassum Juma Ahmed*' 20 Bom 298 (E), defendant is at most entitled to remove the materials but cannot ask for compensation in money.'

No compensation was allowed for repairs effected on the property. That case therefore does not support the view taken by the courts below. Mr. Chatterjee also relied on the case of -- '*Narayanswami Ayyar v. Rama Ayyar*'. That case however dealt with certain improvements made upon the property, namely, the erection of certain buildings. It did not deal with a claim for compensation for mere repairs.

7. As I have already stated, in this case the repairs were effected some years back and the auction-purchaser had the full enjoyment of the property for a long series

of years.

8. In view of the facts of this case I do not think that the defendant is entitled to claim compensation for the repairs effected. The claim of the defendants, accordingly, fails.

9. The appeal must, therefore, be allowed, the Judgments and the decrees of the courts below in so far as they contain a direction in the decree to the effect that the plaintiffs can get possession on payment of Rs. 300/- as compensation must be vacated. In lieu thereof there would be an unconditional decree in favour of the plaintiffs for possession by evicting the defendants. The decree passed by the courts below would otherwise stand except as regards costs.

10. I direct that in view of the circumstances of this case the parties will bear their own costs in all the courts.

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