

## SUPREME COURT OF INDIA

J. Narayana Rao

Vs.

V. G. Basayarayappa

C.A.No.261 of 1953

(Vivian Bose, S. J. Imam and N. Chandrasekhara Aiyar, JJ.)

09.05.1956

### JUDGEMENT

#### IMAM J. –

1. This is an appeal from the decision of the High Court of Mysore on a Certificate granted by that Court to the appellants, who were defendant 3 in the suit.

2. The plaintiff had purchased the property in suit from one Gangamma, Daughter of Gurushanthamma, under a registered sale - deed dated 28-4-43. The property was already mortgaged. The plaintiff accordingly brought a suit for redemption and possession. The appellant had previously purchased the property from the father of defendants 1 and 2 on 31-8-42. His contention was that he was a bona fide purchaser without notice of the mortgage and had effected improvements on the property.

3. A preliminary decree for redemption and possession was passed by the Munsif on 30-6-45. The Munsiff found that the appellant was a bona fide purchaser and had in fact effected improvements on the property. He was entitled to compensation under S. 51, Transfer of Property Act. The preliminary decree accordingly directed the plaintiff to choose within two months either to pay to the appellant the cost of improvements and take possession of the property or to sell the property in suit to the appellant. The plaintiff elected on 25-7-45 to pay the appellant the cost of improvement and take possession of the property.

The plaintiff filed an application on 26-7-46 for the preparation of a final decree. A Commissioner was appointed by the Court to enquire into and report on the value of the improvement effected by the appellant. The Munsiff examined the Commissioner and other persons for the plaintiff and the appellants as witnesses. He came to the conclusion, on the evidence, that on 30-6-45 the cost of the old building which existed on the property in suit at the time of the appellants purchase was Rs. 10854 and the cost of the new construction made by the appellant was Rs. 18,840.

Deducting the cost of the old building he held that the cost of the improvement was Rs. 7,986 and directed the plaintiff to deposit that amount in court and take possession of the property. It may be mentioned here that this amount was in addition to the sum of Rs. 1000 mentioned in the preliminary decree payable by the plaintiff towards the mortgage money, interest, cost, repair and taxes. A final decree was accordingly made on 27-2-48.

4. Against the decision of the Munsiff the appellants appealed and his appeal was heard by the Additional Subordinate Judge, Bangalore. The Subordinate Judge, by his order date 9-9-48, set aside the decree of the Munsiff and remanded the case to him for a fresh finding on Issue No. 5, the relevant issue on the question of improvement effected by the appellant. Against the order of remand the plaintiff moved the High Court. The High Court set aside the order of the Subordinate Judge and directed him to hear the appeal and dispose of it according to law.

The appeal was reheard by another subordinate Judge, who, while upholding the decision of the Munsiff that the appellant was entitled to compensation for cost of improvement disagreed with him as to the quantum of compensation to be paid to the appellant by the plaintiff. In his opinion the cost of improvement was on 25-7-45, the date of election by the plaintiff, Rs. 14,146. The difference between that sum and the sum fixed by the Munsif therefore would be Rs. 6160. The plaintiff and the appellant both being dissatisfied with this result appealed to the High Court. The High Court was of the opinion that the Munsiff's view on the evidence, was the correct one. It accordingly set aside the decision of the Subordinate Judge and restored that of the Munsiff. Against the decision of the High Court, the present appeal has been filed.

5. That the appellant was a bona fide purchaser of the property in suit without notice of the mortgage has been consistently held by all the Courts below and we see no reason to take a contrary view. The Courts below applied the provisions of S. 51, Transfer of Property Act to determine the equities between the parties and we think that they were right, having regard to the decision of the Privy Council in the case of Narayanaswami Ayyar v. Rama Ayyar, 57 Ind. Appl. 305: (A. I. R. 1930 PC 297) (A).

6. It was strongly contended on behalf of the appellant that the Courts below erred in fixing the date of election (25-7-45) by the plaintiff as the date of eviction and assessing the amount of compensation accordingly. On a true reading of the provisions of S. 51, Transfer of Property Act the date is the date of actual eviction and the cost of improvement on that date should be the compensation payable to the appellant. The appellant was actually dispossessed on 1-7-48. In the alternative, it was said that the appellant did not wish to make any profit out of the transaction. He should not, however, be out of pocket and if he was paid the amount he had spent on effecting improvement, he would be content.

In any event the High Court erred in restoring the decision of the Munsiff. On the evidence, which was open to this Court to examine as the High Courts, Judgment was one of reversal, it would be clear that the newly constructed building, after demolishing the old one, was worth at the least Rs. 25000. The old building at the time of the appellant's purchase was not worth more than Rs. 4,522. It had to be remembered that the appellant had purchased the property, including the land and the old building, for Rs. 8750. The land on which the old building stood had a value. In these circumstances the least amount of compensation payable to the appellant should be Rs. 21000 in round figures.

7. On behalf of the plaintiff it was argued that the Munsiff's decision was correct and the High Court was justified in restoring it. The Subordinate Judge had arrived at the value of Rs. 25000 for the new building on worthless evidences of incompetent witnesses who were merely expressing loosely their estimate of the value of the said building. The date of election, in law, would be the date of eviction. The date of actual dispossession could not be the true date as such eviction must take place after the decree had been drawn up and enforced.

8. In our opinion S. 51, Transfer of Property Act merely lays down an equitable principle and enables a Court to determine the equities between the parties. A decree in the form in which it has been passed in this case, which was a suit for redemption and possession could have been passed.

We regard the decision of the Privy Council in 57 Ind. App 305: (A. I. R. 1930 PC 297) (A) as an authority which supports our opinion. We think, however, having regard to the provisions of S. 51, Transfer of Property Act, that if the evidence enable a Court to do so. It should assess the valuation of the improvement as at a date as near as possible to the date of actual eviction rather than the date of election as has been done in this case.

9. Coming now to the evidence in the case, the appellant has created difficulties for himself in not producing his books of account, which would have enabled a Court to know exactly how much he had spent on improvement and thus assist it in arriving at the relevant conclusion in the case, namely, what was the saleable value of the improved property. See Kidar Nath v. Mathu Mal, 40 Cal 555 (B). Oral evidence, such as it is on the side of the appellant, is not very convincing.

The only reliable evidence in the case is that of the Commissioner, P. W. 6, appointed by the court. He is a qualified person and has had to do valuation of buildings regularly in the course of his employment as an Executive Engineer of City Improvement Trust Board, Bangalore. A fair reading of his evidence does not disclose any substantial ground for disbelieving him. We proceed, therefore, to rest our decision on his evidence only and such other evidence as may support him. The Commissioner was examined in Court on 25-7-47. He had checked his measurements several times in January and February 1947. He has given the various rates prevailing in the various years and he has computed his valuation on that basis for the old building and the new construction.

A comparative table as stated below may be convenient in order to understand his evidence.

OLD BUILDING      NEW BUILDING.

As built in 1941-42 Rs. 4,522    As build in 1942-43 Rs. 10,200

" " " 1942-43 " 5,818 " " " 1943-44 " 10,990

" " " 1943-44 " 6,332 " " on 5-6-44 " 10,990

" " on 5-6-44 " 6,332 " " " 30-6-45 " 18,840

" " " 30-6-45 " 10,854 " " in 1945-46 " 16,489

" " in 1945-46 " 9,044 " " on 1945-46 " 16,489

" " in 1945-46 " 9,044 " " on 16-7-46 " 20,776

" " on 16-7-46 " 11,395

If built in January and February 1947]..... 13,566      If built in February 1947].... 24,733

From this table the respective values of the old and the new building at the date of the preliminary decree, at the date of election by the plaintiff and at a time nearest to the dispossession of the appellant become apparent on the supposition that the buildings were build at those stages. There is

no evidence as to the actual cost of constructing the old building or the new. Whatever the actual value of the old building may have been at the time of its demolition by the appellant, the appellants witness B. Sagappa, D. W. 10 has stated in the clearest terms that in 1945 that building was worth Rs. 9,000/- to Rs. 10,000/-. This, in our opinion, supports the valuation of that building on 30-6-45 arrived at by the Commissioner.

We would, therefore, rely on the calculation arrived at by the Commissioner and would conclude that at the time of the appellant's purchase in August 1942 and at about the time of its demolition the old building was worth about Rs. 5,818/-. As a vendible subject the building as newly constructed would be worth about Rs. 24,733/- in February 1947. The improvement effected by the appellant therefore would amount to Rs. 18,915/- having regard to values in February 1947. It is impossible to ascertain with any degree of precision the exact value of the improvement in the absence of definite evidence. All that can be done is to arrive at a fair assessment on the materials available.

We think the evidence of the commissioner gives sufficient data on which to proceed and there is no need to take additional evidence. In cases of this kind it is not the actual cost of improvement which concludes the matter. The principle on which one must proceed is what is the worth of the improvement in the property as a vendible subject. The value arrived at by the Courts below is not acceptable to us.

10. We hold, on the evidence, that the value of the improvement effected by the appellant amounts to Rs. 19,000/- in round figures. That sum will be entered in the decree of the Court as the amount of compensation payable by the plaintiff to the appellant upon which the former would be entitled to possession. As the appellant has already been dispossessed, he would be entitled to restitution if the plaintiff fails to pay the balance due after deducting the amount of compensation already deposited in Court. We give the plaintiff time to pay the balance of the compensation on or before 30-11-1956.

11. The appeal is accordingly allowed and the decree of the Court below is modified as above. As the appellant has substantially succeeded, he is entitled to the costs of the appeal in this Court to be paid to him by the plaintiff respondent.

Appeal allowed.

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