

(1921) 02 BOM CK 0013

In the Bombay High Court

Case No : Civil Extraordinary Application No. 255 of 1920

Dnyanu Laxman Gaikwad

APPELLANT

Vs

Fakira Ebram Lohar

RESPONDENT

Date of Decision : 24-02-1921

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Dekkhan Agriculturists Relief Act, 1879 — Section 15B
Transfer of Property Act, 1882 — Section 72

Citation : AIR 1921 Bom 250 : (1921) 23 BOMLR 567

Hon'ble Judges : Shah, J; Norman Macleod, J

Bench : Division Bench

Judgement

Norman Macleod, Kt., C.J.—This rule was granted u/s 115 of the Code of Civil Procedure. The suit was filed by the plaintiff's to redeem the plaint property. The trial Court ordered defendants Nos. 4 and 5 to deliver possession of this plaint lauds in their respective possession free of all incumbrances and charges after removing therefrom the houses and cattle-sheds erected by them. This decree in revision before the District Judge was varied by directing that plaintiffs should pay the amount of Rs. 2,346 as costs of improvements made by defendants with costs within six months from the date of the decree and then take possession of the property, Survey No. 738.

2. The principal question in dispute was whether the defendants who purchased from the original mortgagee should be allowed the cost of the improvements. They had improved the property by erecting buildings and a cattle-shed and constructing a pucca well at a cost of over Rs. 3,000 and it is contended that this sum of Rs. 2,346 mentioned in the decree should not be allowed. Assuming for the purpose of argument that the decision in Nijalingappa Nijappa Halagatti Vs. Chanabasawa Satavirappa Nesari, is correct and that the mortgagee was a bona fide purchaser and therefore he is entitled to what has been spent on reasonable lasting improvements apart from the provisions of Section 72 of the Transfer of Property Act, it becomes a question what are reasonable improvements. To begin

with, there is the principle of equity that the mortgagee should not be allowed to improve the property to such an extent as to deprive the mortgagor in effect of the right to redeem, In the case referred to, the cost of the improvement which the mortgagee asked for was less than the value of the mortgage and in the case of *Sheppard v. Jones* (1882) 21 Ch. D. 649, the case relied upon in *Henderson v. Astwood* [1894] A.C. 150, the cost of the improvements asked for was X 8B on a mortgage of ? 4000. I do not think that this aspect of considered by the Court below. it is unreasonable that a mortgagee could ever be allowed to improve the mortgaged property to the extent of twenty or twenty-three times the mortgage the result in most cases of depriving the mortgagor of his right to redeem. Admittedly, the plaintiff in this case are in a very humble position. One of the arguments of the defendants was that they knew about the improvements because they were working in this field as labourers. It is quite impossible to imagine that the sum demanded can be raised within six months and therefore considering how this case has been dealt with in the lower Court, we think it is one in which we are entitled to interfere.

3. The defendants have had the advantage of their improvements for a considerable number of years and to some extent they must have been paid for the coat of their improvements. We might either make the sum which was awarded by the District Judge payable in small instalments or we might reduce that sum and make it payable within a shorter time. Looking at the case in the most favourable way for the defendants, we do not think that a larger sum than Rs. 1,200 should be allowed for the costs of the improvements, though we should not like to be considered as thinking in any way that really Rs. 1,200 was a reasonable amount which the mortgagee could spend in improving property which had been mortgaged for Rs. 100. Still in the circumstances of the case, the plaintiff-mortgagor after he has paid off this amount will have the benefit of the increased value of his property, and we think the following order will meet the equities of the case.

4. We set aside the decree of the District Judge and direct that the plaintiffs be put in possession of the mortgaged property and that he should pay a sum of Rs. 1,200 to the defendants on account of the improvements effected on the property to be paid off by six annual instalments, the first instalment being payable on the 15th of January 1922. In default of any one payment, the defendant can take action u/s 15B of the Dekkhan Agriculturists" Relief Act.