
(1910) 04 MAD CK 0018
In the Madras High Court

M. Narasayya and Eighty Five Ors.

APPELLANT

Vs

Unde Rajaha Raja Sir Raja Velugoti Sree Raja Gopala Krishna
Yachendrulavaru Bahadur, K.C.I.E., Panchahazar, Mansubdar,
Raja of Venkatagiri

RESPONDENT

Date of Decision : 26-04-1910

Acts Referred:

Transfer of Property Act, 1882 — Section 108(h)

Citation : (1914) ILR (Mad) 1

Hon'ble Judges : Charles Arnold White, C.J.;Abdur Rahim, J

Bench : Division Bench

Judgement

Charles Arnold White, C.J.—This is an appeal by the plaintiff against so much of the decree in ejectment obtained by him as directs the

payment of compensation to certain of the defendants. In cases to which the Transfer of Property Act applies the rights of the tenant are defined by

Section 108 (h) of that enactment and the extent of the right is the same in cases not governed by the Act. See Ismail Khan Mahomed v. Jaigun

Bibi (1900) ILR 27 Calc. 570. I do not think Section 51 of the Act applies in terms as between landlord and tenant. The observations in Ismai

Kani Rowthan v. Nazarali Sahib (1904) ILR 27 Mad. 211 at p. 221, may be said to indicate a contrary view but these observations are very

guarded, and they are moreover obiter. Even if the section applied, I do not see how, in this case, it could be said the defendants believed in good

faith they were "absolutely entitled" to the property in question. There have been at least two resumptions of the property by the Zamindar. There is

no trustworthy evidence that these resumptions were resisted by the defendants. There have been enhancements of rent and there is nothing to

show those enhancements were not accepted without protest. Both under the Hindu and the Mahomedan law as well as under the common law of

India, a tenant who erects a building on land let to him can only remove the building and cannot claim compensation on eviction; Ismai Kani

Rowthan v. Nazarali Sahib (1804) ILR 27 Mad. 211 at p. 221.

2. The further question is, do the facts of this case bring it within any principle of equity which entitles the defendants to say, "if we are evicted, we

must be paid compensation"? At the highest the evidence shows the plaintiff knew the improvements were being effected and did not interfere. This

is clearly not enough to estop the plaintiff in a suit for possession [see Beni Ram v. Kundan Lal (1899) ILR 21 All. 496 (P.C.)], and in my opinion

it is not enough to give the defendants a right to compensation. In fact, I should be disposed to hold, if there is no express contract, unless the

lessor is estopped from suing for possession the lessee cannot claim compensation. If the lessor is estopped from recovering possession the Court

can say--you are estopped but we will not enforce this equity against you if you pay the tenant such compensation as we think fair.

3. There are however no doubt cases in which courts in this country have granted compensation on what I may call general equitable grounds,

without considering the question whether the facts gave rise to an estoppel against the lessor which would disentitle him from suing to recover

possession. Assuming a right to compensation may arise in a case in which the lessor is not estopped from recovering possession, I am of opinion,

on the facts, there is no such right in this case.

4. The learned Judge in the Court below relied on Dattī¹/₂traya Rayaji v. Shridhar Nī¹/₂rī¹/₂yan (1893) ILR 17 Bom. 736. In that case

compensation was awarded to the tenant, the Court being of opinion that the facts brought the case within the principle of the decision in Ramsden

v. Dyson (1864) L.R. 1 H.L. 129 at p. 171, but there were special circumstances in that case from which the Court was able to draw the

inference that the plaintiff by his conduct afforded hope and encouragement to the defendant that he would be allowed to remain in peaceable

possession or at least would not be ejected without a reasonable return for the expenditure incurred by him. Mahī¹/₂latchmi Ammī¹/₂l v. Palani

Chetti (1871) 6 M.H.C.R., 245, is no doubt an authority in the defendants' favour

but with all respect, I doubt if this decision is good law. See the observations in *Ismail Kani Rowthan v. Nazarali Sahib* (1904) ILR 27 Mad. 211 at p. 221.

5. Even accepting the principle laid down in *Nundo Kumar Nashar v. Banomali Gayan* (1902) ILR 29 Cal., 871 at p. 884, in my opinion the facts of this case do not come within the principle there stated.

6. In *Municipal Corporation of Bombay v. Secretary of State* (1905) ILR 29 Bom. 580, the Court held, on the facts, that the defendants acted on a belief which was referable to an expectation created by Government that their enjoyment of the land would be in accordance with that belief and that the Government knew that the defendants were acting in this belief so created. In this view of the facts the Court held the defendants were entitled to the benefit of the dictum formulated by Lord Kingsdown in *Ramsden v. Dyson* (1864) L.R. 1 H.L. 129 at pp. 141 and 170.

7. In *Ramsden v. Dyson* (1864) L.R. 1 H.L. 129 at pp. 141 and 170, the House of Lords held against the alleged equitable rights set up by the defendant, Lord KINGSDOWN dissenting from Lord CRANWORTH, Lord WENSLEYDALE and Lord WESTBURY. There is nothing,

however, so far as I can see, in the judgments of these learned Lords which is inconsistent with Lord KINGSDOWN'S proposition. The

proposition is this: "If a man, under a verbal agreement with a landlord for a certain interest in land, or, under an expectation, created or

encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith

of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of Equity

will compel the landlord to give effect to such promise or expectation." I do not think the facts of the present case bring the case within Lord

KINGSDOWN'S dictum. In my opinion the evidence does not show that there has been a hope or expectation in the tenant which was created or

encouraged by the landlord.

8. I think this appeal should be allowed with costs.

Abdur Rahim, J.

9. I agree that this appeal should be allowed as I have no doubt that in the circumstances referred to by the learned Chief Justice the tenants could

not have believed in good faith when they dug the wells in the land that they had a permanent right to the land or that the landlord would grant them

such a right. If they had acted under such belief they would have been entitled to insist that they should -not be ejected at all or that if ejected

compensation should be paid to them for the improvements which they had effected under such belief provided they proved that they made the

improvements in circumstances which would induce a Court of Equity to imply a contract between them and the landlord that the landlord would

not eject them or in case he ejected them that he would pay them the value of the improvements. The court would infer such a contract if the

landlord by his conduct encouraged or raised an expectation in the tenant spending money in making improvements that the latter would not be

evicted at all or at least not without being compensated for the value of such improvements and the improvements were in fact made under such

expectations. Such a contract is inferred in order to relieve the tenant from the fraud of the landlord. This I take it is the extent to which the doctrine

of equitable estoppel is well established; Ramsden v. Dyson (1864) L.R. 1 H.L. 129 at pp. 14,1 and 170, Beni Ram v. Kundan Lal (1899) ILR

21 All. 406 (P.C.) and Municipal Corporalion of Bombay v. Secretary of State (1905) ILR 29 Bom. 580. We are not called upon to decide in

this case having regard to its undoubted facts the question whether if the tenants believed that they had a permanent right to the land and in such

belief, but without that belief being created or actively encouraged by the landlord, made the improvements to the knowledge of the landlord and

without any warning or interference by him, they could be ejected at all or whether in any case the landlord should not pay them the value of

improvements. The opinions delivered by the learned Lords in Ramsden v. Dyson (1864) L.R. 1 H.L. 129 at pp. 141 and 170 especially that of

the Lord Chancellor, Lord Cranworth, make it clear that in cases of this nature the Court of Equity would raise an equitable estoppel against the

owner of the land less readily in a case where the tenant makes permanent improvements on the land than where a stranger makes similar

improvements. And the grounds for such a distinction are obvious. The tenant making permanent improvements might well have relied on the

honour of the landlord not to evict him so long as the rent was regularly paid. While ordinarily a similar interpretation could hardly be placed on the

conduct of a stranger in spending his money upon another's land. And I do not think the doctrine of equitable estoppel has been or should be

extended as between a landlord and his tenant to a case where all that can be alleged against the former is that he did not interfere and merely

remained passive with the knowledge that the tenant was making improvements under a mistaken belief that he had a more stable interest in the

land than that of a tenant at will or of a tenant from year to year. This is what I gather from what is laid down in *Beni Ram v. Kundan Lal* (1899)

ILR 21 All. 496 at p. 502 (P.C.), *Ismail Khan Mahomed v. Jaigun Bibi* (1900) ILR 27 Calc. 570 at p. 583, *Ismail Kani Rowthan v. Nazarali*

Sahib (1900) ILR 27 Mad. 211, *Dattitraya Rayaji v. Shridhishri Nishriyan* (1893) ILR 17 Bom. 736 at p. 741 and *Municipal Corporation*

of *Bombay v. Secretary of State*. (1905) ILR 29 Bom. 580. The contrary view which is supported by *Mahilatchmi Ammi v. Palani Chetti*

(1871) 6 M.H.C.R., 245 and a dictum of the learned Judges in *Nundo Kumar Naskar v. Banomali Gayan* (1902) ILR 29 Calc. 871 at p. 884,

seems to be against the weight of authority. The tenant should know under what terms he has been let into possession and the law lays no duty

upon the landlord to remind his tenant of his title under which he holds the land. So far as the present case is concerned, *Beni Ram v. Kundan Lal*

(1899) ILR 21 All. 496 (P.C.) and *Ramsden v. Dyson* (1864.) L.R. 1 H.L. 129 clearly lay down the principle from which it follows that if a tenant

knowing the extent of his interest in the land in his possession, as is the case here, chooses to expend money upon a title which he must know

would soon come to an end that is his own folly and he cannot ask the owner of the land to recoup him for such expenditure. It has been suggested

that unless the lessor is estopped from suing for possession the tenant would not be entitled to claim compensation. I am not prepared without the

question being argued at the bar to give my adherence to it. Such a proposition was not advanced during argument and it seems to me that there

may be cases where the landlord would not be estopped from recovering possession but only estopped from recovering possession without paying

for the improvements effected by the tenant. I may mention that there is a class of cases in which the court has refused to grant a mandatory

injunction for the removal of permanent buildings erected on his holding by a ryot having a right of occupancy, if the landlord has been guilty of

laches or delay in bringing his action. But those cases stand on a different principle. As regards Section 108 of the Transfer of Property Act--that only deals with the right of the tenant to remove the fixtures" he has planted in the land and Section 51 of the same Act apparently applies only to the case of a transferee of an absolute right in land. Nor are we concerned in this case with the right under the Hindu or Muhammadan law of a tenant or a trespasser to remove buildings or the structures erected by such a person.