

(1911) 12 MAD CK 0020
In the Madras High Court

Nallasawmi Pillai and Others

APPELLANT

Vs

Ramasawmi Pillay and Another

RESPONDENT

Date of Decision : 01-12-1911

Acts Referred:

Citation : 13 Ind. Cas. 450

Hon'ble Judges : Sundara Aiyar, J; Spencer, J

Bench : Division Bench

Judgement

1. No question of law has been argued with regard to the validity of the alienation of any of the items except item 5. With respect to that item it is contended by the learned Vakil for the third appellant that as, according to the measurement in Exhibit VIII, the item comprised only 86 cents and as item 5 now measures 127 cents, the plaintiffs are not entitled to recover the difference. The 11th defendant did not contend in his written statement that the excess was not part of the property of the deceased Navakotiapillai and no definite statement is made in this Court as to how the 11th defendant acquired it if he did not do so under the sale-deed, Exhibit VIII. The difference in measurement is apparently due only to the greater accuracy of the later measurement than of the earlier one. The judgment of the lower Appellate Court must be upheld with regard to this item also.

2. The first respondent in his memo, of objections contends that the award of Rs. 150 for improvement made in item 5 is wrong. It does not appear from the judgment of the Judge on what grounds he has allowed it. He says that he allows Rs. 150 for the addition in the extent. If it was due merely to more accurate measurement then undoubtedly the 11th defendant would not be entitled to the amount. It was contended in the Court of first instance that the 11th defendant had made improvements, but the District Munsif disbelieved the evidence adduced to prove the contention. No objection is raised to his finding in the memorandum of appeal.

3. We have examined the evidence on the question and have come to the

conclusion that the 11th defendant has not proved any right to compensation for improvements made by him. Examined as a witness, he said that he had spent about Rs. 200 but in cross-examination admitted that he could not say how much he spent. The defendant's 11th witness who was a lessee under the 11th defendant said that he spent the money and that the 11th defendant kept the accounts for him. He does not say that the 11th defendant paid him any compensation, nor does the 11th defendant say that he made any payment to the 11th witness. No compensation can be awarded unless it be found that the person claiming it incurred the expenditure.

4. We must hold that the evidence is insufficient to prove any claim to compensation for improvement. We must, therefore, disallow the award of Rs. 150 and modify the decree of the lower Appellate Court by substituting Rs. 100 for Rs. 250 as the sum to be paid to the 11th defendant before the plaintiffs can recover item 5. The plaintiffs are entitled to mesne profits for 2 years and 10 months and further mesne profits from the date of delivery of possession. The 11th defendant will be entitled to interest on Rs. 100 from the date of the widow's death at 6 per cent, per annum up to the date of payment. Our award of interest to the 11th defendant is in accordance with the judgment in *Mutleeram Kowar v. Gopaul Sahoo* 11 B.L.R. 416 : 20 W.R 187.

5. The second appeal must be dismissed with costs. There will be no costs on the memorandum of objections.