

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

Murugesu Sunderalingam,
Valakamparai Temple,
West Street, Tholpuram,
Chulipuram.
Defendant-Respondent-Appellant

SC/APPEAL/138/2015
HCCA/JAF/162/2012
DC MALLAKAM L/430

Vs.

Thuraiappah Surendran,
Paralai Veedi,
Chulipuram.
Plaintiff-Appellant-Respondent

Before: Hon. Chief Justice P. Padman Surasena
 Hon. Justice Mahinda Samayawardhena
 Hon. Justice Menaka Wijesundera

Counsel: N.K. Ashokbharan for the Appellant.
 Shakthiyaraji Kamalanathan for the Respondent.

Written submissions on:

By the Appellant on 03.07.2025

By the Respondent on 14.07.2025

Argued on: 12.06.2025

Decided on: 22.10.2025

Samayawardhena, J.

The plaintiff instituted this action in the District Court of Mallakam seeking a declaration of title to the land described in the schedule to the plaint, ejectment of the defendant therefrom, and damages. The defendant did not challenge that the plaintiff is the owner of the land. His position was that he is a *bona fide* possessor who entered into possession with the leave and licence of the plaintiff's predecessor in title, one Ampalanathan, and that he has been residing on the land since 1992 after constructing a house thereon. The defendant claimed that he is entitled to remain in possession until a sum of Rs. 750,000 is paid to him as compensation for the improvements made by constructing the said house.

At the trial, the said Ampalanathan gave evidence on behalf of the plaintiff. He testified that the defendant and his family, together with many others, had been displaced, most likely due to the civil disturbances prevailing at that time in the North, and were temporarily accommodated in a temple. After some time, they were requested to vacate the temple. With the consent of the new owner of the land, to whom Ampalanathan had sold the property, the defendant was permitted to occupy the land in suit for a period of six months. Initially, a temporary hut was erected, but thereafter, without any permission from Ampalanathan or his successors in title, the defendant proceeded to construct the existing house. This evidence directly contradicts the defendant's assertion that he was a *bona fide* possessor throughout the period of his occupation. The District Court accepted the testimony of Ampalanathan and rejected the version put forward by the defendant.

The main question that arises for consideration is whether the defendant is entitled to compensation for the improvements effected on the land. Upon conclusion of the trial, the District Court declared that the plaintiff is the lawful owner of the land, but nevertheless awarded the defendant a sum of

Rs. 400,000 as compensation for the improvements. It is this award of compensation that forms the principal matter in controversy before the High Court and this Court.

On appeal by the plaintiff, the High Court of Civil Appeal set aside the order awarding compensation, holding that the defendant had not established that he was a *bona fide* possessor so as to be entitled to compensation for improvements. The High Court further observed that, in any event, there was no evidence upon which the District Court could have determined the quantum of compensation.

It is against this judgment of the High Court of Civil Appeal that the defendant has preferred the present appeal. A previous Bench of this Court had granted leave to appeal on the following questions of law:

- (a) Did the plaintiff as owner of the land allow the defendant to carry out necessary improvements on the land?*
- (b) Did the High Court fail to consider the fact that the defendant carried out the improvements in the honest belief that he was entitled to do so under the law?*
- (c) Can the plaintiff take advantage without making compensation for improvements effected by the defendant in good faith believing himself to be entitled to enjoy them for a term or in perpetuity?*

On the facts and circumstances of this case, I am in agreement with the finding of the High Court that the defendant cannot be regarded as a *bona fide* possessor beyond the expiry of the six-month period during which he was permitted to occupy the land as a matter of goodwill, given that he and his family had no other place to go and had been stranded at the time. Although he was requested to vacate the land at the end of that period, he failed to do so and continued in unlawful possession. Thereafter, his

occupation was *mala fide*, and he accordingly forfeited any claim to the rights of a *bona fide* possessor.

A *mala fide* possessor is one who occupies or exercises control over property in bad faith, knowing that he has no valid title or lawful right to do so, or being in circumstances where he cannot reasonably claim ignorance of its unlawfulness. By contrast, a *bona fide* possessor is one who, under an honest and genuine belief founded upon reasonable justification, assumes possession of property in the mistaken impression that he has a valid title or right to do so. The distinction is critical, for the law affords protection and certain equitable remedies to *bona fide* possessors, while denying such benefits to those whose possession is tainted by *mala fides*.

Roman-Dutch law classifies improvements into three categories: necessary improvements (*impensae necessariae*), useful improvements (*impensae utiles*), and ornamental improvements (*impensae voluptuariae*). Necessary improvements are those essential for the preservation or protection of the property, without which the property would inevitably deteriorate. For instance, repairing a boundary wall to prevent collapse, installing a roof to protect a building from ruin, or constructing drainage to avert flooding. However, this category should be understood subject to the condition that the owner in fact intended to preserve the property. If the owner did not intend to preserve the property, the expenditure cannot be regarded as a necessary improvement. Thus, if a possessor repaired a crumbling roof of a house which the owner nevertheless intended to demolish and replace with a new house, such repairs would not constitute an improvement at all. Useful improvements are those that, while not indispensable, substantially enhance the value, productivity, or reasonable utility of the property, such as putting up a permanent dwelling on vacant land, building an irrigation system to increase agricultural yield, or adding rooms to a house to make it more functional. Ornamental improvements are those made merely for

decoration, luxury, or personal gratification, such as constructing a fountain, carrying out elaborate landscaping, or erecting decorative pillars.

As a general rule, the right to claim compensation for improvements is confined to *bona fide* possessors having *civilis possessio*, and does not extend to *mala fide* possessors. Only *bona fide* possessors are entitled to exercise the right of retention (*ius retentionis*) until compensation is paid. Where improvements are necessary improvements (*impensae necessariae*), both *bona fide* and *mala fide* possessors are entitled to compensation, since such improvements preserve the very existence of the property, provided that the owner intended its preservation. Where improvements are useful (*impensae utiles*), only the *bona fide* possessor is entitled to compensation, unless the true owner, with full knowledge of the improvements, has stood by and allowed them without objection, in which event the doctrine of unjust enrichment, grounded in equity, may permit compensation even to a *mala fide* possessor. It may be relevant to note that the Roman-Dutch jurists are divided on payment for useful improvements: Groenewegen, Van Leeuwen, Voet, and Schorer maintain that a *mala fide* possessor is entitled to compensation for useful improvements, whereas Grotius and Van der Keessel take the opposite view. As a general principle, where the improvements are ornamental or superfluous (*impensae voluptuariae*), no compensation is payable.

In a *rei vindicatio* action, once paper title of the plaintiff is admitted or proved, the defendant shall prove on what right he is in possession of the property. The burden rests on the defendant to establish the amount of compensation, which shall be limited to either the enhanced value of the land attributable to the improvements or the actual cost incurred in effecting them, whichever is the lesser.

Vide The General Ceylon Tea Estates Co. Ltd v. Pulle (1906) 9 NLR 98, *Carimjee v. Abeywickreme* (1920) 22 NLR 286, *Wijeyesekere v. Meegama*

(1939) 40 NLR 340, *Anglo-Ceylon and General Estates Co. Ltd v. Abusalie* (1954) 55 NLR 345, *William v. Attadasie Thero* (1962) 65 NLR 181.

Whatever the nature of the improvement, the owner cannot be compelled to accept improvements against his will and thereby be forced to pay compensation. If the owner does not need improvements, the improver may be allowed to exercise the right of removal (*ius tollendi*), provided this can be done without causing material injury to the property, and subject to restoring the property to its original condition. The principle rests on the equitable notion that, while an owner cannot be compelled to accept and pay for improvements he does not desire, neither should a *bona fide* possessor be deprived altogether of the benefit of his expenditure. The *ius retentionis* and the *ius tollendi* thus operate as complementary doctrines: the former ensures fairness to the *bona fide* possessor by securing compensation for necessary improvements or useful improvements which the owner elects to retain, while the latter safeguards the owner's autonomy by preventing the imposition of unwanted improvements upon his property.

Vide Walter Pereira, *Laws of Ceylon*, 2nd edition (1913), pages 352-380, Wille's *Principles of South African Law* by J.T.R. Gibson, 7th edition (1977), Juta & Co. Limited, page 498, G.L. Peiris, *Some Aspects of The Law of Unjust Enrichment in South Africa and Ceylon* (1972), pages 11-69.

In *Sirisena Navalage v. Kalawana* [2012] 2 Sri LR 98, Dep J. (as he then was), at 107–108, observed:

As he was not a bona fide possessor he is not entitled to any compensation. He had been in occupation of the land unlawfully for more than two decades and he would have reaped the benefit of the improvements carried out by him at his own risk. Therefore, I hold that the Defendant is not entitled to any compensation for the improvements.

In *Wanigaratne v. Wanigaratne* [1997] 2 Sri LR 267 at 271-272, Edussuriya J. noted:

In this case the appellants are not bona fide possessors as it was decided that the respondent's predecessor in title (the father) had never led the appellants to believe that this property would be given to them, and therefore the respondent cannot be ordered to pay compensation for buildings which were constructed by the appellants who are mala fide possessors.

Further trespassers cannot foist on the owner what they consider to be necessary improvements, done without the owner's consent and claim compensation. It could well be that the owner had other plans and may have to demolish the "improvements" effected by the trespassers because they are not necessary improvements. Besides there is no evidence that they are necessary improvements. If Courts of Law were to hold that owners of land should pay compensation to trespassers who have put up buildings thereon, then we would be paving the way for trespassers to build as they like, because at the end of the day they can walk away with compensation, after having been in forcible possession for a period of years and having rented out such buildings and earned thereby, as in this case.

In the same case, Senanayake J. at pages 274-275 added:

*In the instant case the appellants were trespassers on the land, therefore they were mala fide possessors. It is well settled law and decided in the case of *The General Tea Estates Co. Ltd. v. Palle* 9 NLR 98 that a mala fide possessor was not entitled under the Roman Dutch Law, as administered in Ceylon to compensation for *impensa utiles*. Pereira Acting Puisne Justice observed in a case reported in 2 *Balasingham's Report* 149 "a mala fide possessor is one who*

possesses well knowing that he has no right to do so in as much as the property possessed belongs to another and it would be unreasonable to allow him to force on the true owner improvements which very useful though they be are effected according to his own taste or whims and his fancy and may be such as the true owner himself would never have cared to effect.”

More recently, in *Susiripala v. Sumanawathie* (SC/APPEAL/61/2014, SC Minutes of 20.01.2022), I restated the principle in the following terms:

Only bona fide possessors are entitled to compensation for useful improvements and the ius retentionis (right of retention) is available to them until compensation is paid by the owner. Even if the defendant is a bona fide possessor, the plaintiff does not want the buildings on the land perhaps because she does not have the financial capacity to pay compensation. The buildings cannot be thrust upon her and she cannot be compelled to pay compensation to the defendant. The High Court allowed the defendant to remove the buildings. The ius tollendi (right to remove improvements) is available to the improver when compensation cannot be awarded.

The appeal before us falls squarely within this established framework. In the present case, the defendant has been in unlawful occupation at least since 1993. The defendant, not being a *bona fide* possessor beyond the period of permissive occupation, cannot compel the plaintiff to accept or pay for the so-called useful improvements. As the plaintiff does not desire to retain the improvements, the defendant’s entitlement, even assuming *arguendo* that he were to be regarded as a *bona fide* possessor, extends only to the *ius tollendi*—the right to remove the improvements—provided that such removal can be done without causing material injury to the land. Equity cannot be invoked to shield a wrongdoer or to impose an unwarranted burden upon the true owner.

I answer the questions of law raised in this appeal against the defendant.

I affirm the judgment of the High Court and dismiss the appeal subject to the condition that the defendant may remove the improvements without causing material injury to the land and hand over vacant possession of the land to the plaintiff on or before 28.02.2026. In the event of failure to comply, the plaintiff shall be entitled to obtain writ to eject the defendant and all those holding under him forthwith.

Judge of the Supreme Court

P. Padman Surasena, C.J.

I agree.

Chief Justice

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court