

Evicted from a house you thought you owned?

If you hold a defective title and are evicted from the property, you can reclaim the funds you spent on renovating the house

Sunil Tyagi

htestates@hindustantimes.com

It's a peculiar situation to be in, but in India anything is possible. What happens if someone renovates a property or constructs a house and realises that the title of the property is defective? What if the person is evicted from the property by the lawful owner who has a better property title? In such a situation, what rights does the person (who has made improvements in the property) and been evicted, have?

To make it clearer, suppose X acquires a plot of land under the will executed by his father. He believes he is the lawful owner of the property and constructs a triple storey building on it. However, he soon discovers that the property belongs to his paternal uncle and that it was wrongly willed to him by his father. He is then evicted from the property. In such a situation, Section 51 of Transfer of Property Act, 1882, comes into play.

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The Act states that in such circumstances the person who has made improvements in the property but is now being evicted has alternative rights against the person with the better title. He has three options:

- To pay the estimated value of the improvement at the time of eviction, or
- To secure to him the estimated value of the improvement at the time of eviction, or
- To offer to sell the property to the person being evicted, at the then market value thereof, exclusive of improvements

The High Court of Madras in the case of *Vijayalakshmi vs Sulochana* and others, dated October 7, 2010, dealt with a case such as this. A plot of land measuring 3,600 square feet was sold by KB Padmanabhan (owner) to Sulochana who was the first buyer vide sale deed



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dated August 10, 1966. She and her husband lived in a house which was 15 km away from the plot. They had fenced the plot and installed a gate on one side. On January 28, 1980, MB Murugappan, who was the son of the owner, sold the same plot to Vijayalakshmi. She purchased the plot unaware of any prior sale. Since the execution of sale deed dated January 28, 1980, the second purchaser and her husband constructed a building on the plot in good faith believing themselves to be the lawful owners.

When Sulochana discovered that a building had been constructed on the plot by the sec-

ond buyer, she approached the court asking it to declare her title to the plot and vacate it.

The trial court decreed that Vijayalakshmi, the second buyer, had to pay Sulochana the value of the plot along with interest after which she (Vijayalakshmi) would have valid title over the plot of land and the house. Dissatisfied with the judgment, Sulochana filed an appeal before the appellate court. The appellate court held that the first buyer was entitled to recovery of possession and declaration of title. Since

the second buyer had made improvements to the plot by construction of the building, Sulochana had to pay the second buyer, Vijayalakshmi, the value of the building constructed by her.

Then the second buyer, unhappy with the decree passed by the first appellate court, filed a second appeal before the High Court of Madras. After assessing the facts and going through the documentary evidence available on record, the court concluded that the first buyer was the first purchaser of the property and the purchase made by her was true and valid in the eyes of law.

The second buyer was directed to hand over the plot along with the building/improvements to the first buyer. However, the court on the basis of principles of justice, equity and good conscience directed the first buyer to pay the value of the building constructed by the second buyer on the plot, which was to be determined by the court.

The author is a senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at ht@zeus.firm.in and htestates@hindustantimes.com.