

The Effects of Accession and Equity on Improver's Right to Claim Compensation for Improvements on Non-Owner's Land

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Abstract

Accession and Equity are two legal concepts that conflict each other in the area of payment of reparation as a remedy for losses to bona fide improvements on non-owner's land. Due to these conflicts and rigid application of *civilis possessio* many innocent improvers were adversely affected and they were not reasonably compensated in the area concerned. The objectives of the study were to identify the types of improvements, developments of law in favour of innocent improvers, the effects of unjust enrichments and design of an equitable model of compensation for identified issues. The analysis of findings was purely based on ideology of scholars, legal concepts and judicial decisions. Early courts much relied on *civilis possessio* and innocent parties' relief was on negative side. This position was confirmed in many judicial decisions in the past. However, the latter case law revealed that in spite of existence of *civilis possessio* many developments in this area were created by courts in terms of flexible approach on improver's animus. This paved way for bona fide improver to enjoy the rights of compensation specially for *impensae utiles* (useful improvements). Finding a solution for the problem of determining the right of compensation and the quantum of reparation for improvements was a great challenge on judiciary and fortunately courts were of the view that Equity shall prevail when conflicts arise.

It was evident that unjust enrichment and losses play a vital role in this scenario and compensation should act as a hedge against loss and unjust enrichment. In respect of the identified practical issues of the area of study, a model was designed relying on cash flow and cost aspects based on Equity principle that says “no one should be unjustly enriched at the expense of another”. The rationale was that compensation should be equal to the loss to a bona fide improver.

Key Words: *Improvements, equity, accession, unjust enrichment, compensation*

Introduction

It is a legally accepted fact that permanent improvements on a land enhances value of property under concept of accession. There are many events where improvements are carried out on non-owner’s land by an improver in the form of bona fide or mala fide behaviour. This gives rise to unjust enrichment that is defined as something which is not in accordance with accepted standards of fairness ([google.com/search?q=definition+just+enrichment](https://www.google.com/search?q=definition+just+enrichment)) 2020. It has been identified that unjust enrichments occur and they are not properly remedied in various sector of the society. Compensation means the actual loss to the suffered party and this is a remedy to bring the suffered party to his former financial position he was prior to such damage.

However, in claiming compensation there is a difficulty on the proof of required animus of the improver, namely *civilis possessio* and nature of bona fide possession depending on the given circumstances.

According to accession stemming from Roman Dutch Law any structure or building permanently fastened to earth becomes a part and parcel of land *Brodie v Attorney General (1903)*. Similarly, the

plants once rooted firmly into earth will be treated as immovable property under accession. Accordingly, the improvements on land by a person other than owner is deprived of rights to claim compensation for his improvements. According to Sir Henry Maine “the Equity is a set of principles entitled by their intrinsic superiority to supersede older laws”. However, a concept that stemming from law of equity states that “no one should be unjustly enriched at the expense of another”. This is a point where equity and accession conflict restricting the claim of compensation for improvements done by a non-owner. According to classical law the person who does the improvements with the knowledge that owner is another person intending to benefit the owner is denied the right to compensation. However, the current development of law takes effort to pave way to protect the rights of innocent improver. The law of Equity always identifies importance of compensation minimising unjust enrichments. The civilized society and law do not tolerate the unjust enrichment and damages that create injustice to the society. It is the utmost duty on the shoulders of each individual and society at large to stick to above principle that stemming from the law of Natural Justice. These concepts have a sound application to the subject matter of current study.

Problem Identification

Having identified the practical problem of application of Law of Accession as a mode of acquisition of property and the Equity principles of unjust enrichment, the court confronts the question as to how the conflict of above two concepts are to be resolved in deciding a reasonable compensation to the suffered party. Had the courts followed a strict approach based on principle of accession and *civilis possessio*, the required justice on the innocent party will never take place under equity. In this paper several practical problems have been identified on the field and a model of compensation based on the

application of legal and real estate principles and judicial decisions is to be designed.

Objectives of study

- To identify types of improvements and improver's animus.
- To identify the development of law in respect of improvements on non-owner's land.
- To identify the interaction of unjust enrichment and losses arising from improvements.
- To suggest methods of compensation for improvements, based on concepts of real estate and law of Equity

Limitation of study

This study is restricted to general improvements on non owner's land and improvements by co-owners, mortgagors, life interest holders and the like are not taken into consideration.

Types of Improvements

Generally, improvements encompass following :

- (a) *Impensae Necessariae*. (Necessary improvement)
- (b) *Impensae Voluptuariae*. (Ornamental improvement)
- (c) *Impensae utiles*. (Useful improvement)

Impensae Necessariae are those that are necessary to keep the land in good condition.eg: repairs to a building and general maintenance. Necessary expenses are further described that are necessary to be incurred so as to preserve the property, or to save it from being loss to the owner or wrecked or ruined.

Impensae Voluptuariae are improvements which merely contribute to the adornment of the property but do not increase its profits or permanently enhance its value. This literal meaning of such

improvements refers that it is for the purpose of pleasure or occasions of festivity.

Impensae Utiles are those improvements made to the land which are useful that enhance the commercial value of property.

As Voet says Impensae utiles is the amount or value of the money and the labour expended on the property and however, that sum should not necessarily be equal to the enhancement of the value of land. In other word the improver may be entitled to claim the difference between the value of the land with improvements and without improvements, in so far as it does not exceed what he has actually expended.

Right of retention and removal

In the absence of payment of compensation or until receipt of compensation, the improver has other remedies under equity.

- i. Ius Retentionis (right to retain the property)
- ii. Ius Tollendi (right to remove the improvement)

Ius retention is meant that improver has the right to sue for compensation or retain until such compensation is paid. In early cases it was recognised the right of retention was available only when *civilis possessio* is proved. However recent case law has recognised the right of retention even without proof of *civilis possessio* provided the improver has the right of claiming compensation for his improvements. Another development on the Law of Equity towards unjust enrichment is that the bona-fide improver's right to retain the property improved, until such time the compensation is paid to him *Fernando v Cooray (1967)*.

Ius Tollendi or removal refers to the right to exercise in respect of ornamental improvements because no compensation is allowed for

such improvements. Mala fide improver can remove ornamental improvement and on the other hand it restricts unjust enrichment on the part of owner. Ius Tollendi is treated as an equitable remedy of improver to remove his own materials which would otherwise ensure without just cause to the benefit of the owner.

Accession

Accession, on one hand is a mode of acquisition of property. However, this concept plays an important role in the field of improvements on non- owner's land and payment of compensation. Once a building or structure is done on a land, it becomes part and parcel of the land or it will be the property of owner. Courts have accepted this concept in many decided cases.

In celebrated case *Olivier v Haarhof (1906)*, courts laid down three guidelines to identify whether structure is part of land or not.

1. The nature of particular article.
2. The degree and manner of its annexation.
3. The intention of the person annexing it.

When above guidelines are satisfied the improvement is deemed to be the property of owner.

Many decided cases have enunciated that not only the construction on land but also other improvements such as electrical fittings to a building were considered as a part of land. This position has been specifically confirmed in *Brodie v Attorney General(1903)*.

In New Castle Co. Ltd. v Borough of New Castle (1916) court held that when constructions were permanent and the intention of annexation was strong, it acceded to the soil under accession. This concept basically conflicts with equity principles on the right of an improver on non- owner's land.

Qualifications to claim compensation

Preliminary observations of study revealed that there were two main requisites of right to claim compensation for improvements. They were, the intention of the improver on the performance of improvement and the type of improvement.

Bona fide improver is entitled to claim compensation for useful improvements. Generally, improver's *animus* or intention should be bona fide (good faith) in terms of *civilis possessio*. However, courts have adopted flexible approach to safe guard the rights of compensation of an innocent improver.

Again in *Rosairo Victoria and Elma v Normita (2016)*, it was decided that construction on non – owner's land will never create a co-ownership and improver's bona fide nature is required to claim compensation for useful improvements. It was also observed that in law mala fide improver is not entitled for compensation but courts in certain instances have enabled such improvers to compensation subject to some qualifications. In this manner the rights of aggrieved party are equitably adjusted to reduce the rigid application of *civilis possessio* (*Peiris, 2006*). The qualification to claim compensation for improvements depends upon the type of improvement, intention of improvement and the application of interpretation of *civilis possessio*. This is construed as a path way for a relief to the aggrieved party. This issue has been discussed in the latter part of the paper.

Applicability of Civilis Possessio

As an essential element to the right of compensation, the concept of *civilis possessio* or belief that property is of his own or bona fide, was treated in the same texts of Roman Law in regard to right of compensation. On the other hand, mala fide is meant, the knowledge that dominium is in another. Fundamentally *civilis possessio* was essential to claim for improvements (*Peries 1976*). Similarly Voet

(6.1.36) confirmed that *civilis possessio* is a necessary element to claim right of compensation for improvement on non-owner's land. In *Soysa v Mohideen* ((1914), it was decided that a lessee has no right to compensation as he had no *ut dominus* possession. In other words courts were of the view that *civilis possessio* was an essence to consider the right of compensation.

In *Oosthuizen v Oosthuizen* (1903), it was held that usufructuary has no *civilis possessio* as he knows the owner is someone else. Some recent cases too have relied upon the applicability of *civilis possessio*.

In *Rankhu v Ratshau* (2010) courts discussed a problem of compensation of useful improvements. It was decided in favour of *civilis possessio* and allowed compensation to bona fide improver. *Premaratna v Ananda* (2015), was another decided case where courts took the view that *civilis possessio* is a required element to the right of compensation to a bona fide possessor. It was reliably understood that majority decisions the courts have relied upon the necessity of *civilis possessio* to claim compensation.

Relaxation to Civilis Possessio

In the following cases courts have admitted, the concept of flexible approach, on *civilis possessio* in connection with payment of compensation for improvements and to minimise unjust enrichment. The rationale of this, is to safeguard the rights of an innocent party in the current context.

The improver's knowledge that he is not the owner of a land and performance of improvements on the expectation of a formal title which he believes, is certain to be conferred on him subsequently is a situation where a flexible approach needs to be adopted (*Peries, 2006*).

In *GA Central Province v Lectchman Chetty*, (1922,) an officer improved a property with the expectation of acquisition of ownership of subject land by a statute. Compensation was allowed for improvements. This is an exception to the *civilis possessio*.

In *Marthelis Appu v Jayawardana* (1908), the improvements were done with the expectation of a verbal agreement to convey the land subsequently. Compensation was allowed under equity. Here once again courts had relaxed the rigid application of *civilis possessio*.

In *Harrison v Merchant* (1941) improver had an agreement to pay instalments for the purchase price of the same land. However, there was a default in paying instalments. Owner argued that there was no bona fide possession and improver was not entitled for compensation. Courts held that there was an inoperative planting agreement between owner and planter that included planter's share. The improver had no *civilis possessio*. The improver was compensated for improvements though there was no *animus domini*. In this case the agreement was the acceptance of owner's proprietary rights by planter.

In another case A mistakenly erected a building on a land leased from B believing that it was the land leased to him. In fact, he had improved the C's land. Held that he was entitled to compensation from C.

If a possessor is on a sale agreement to buy the same property, he is entitled to compensation for improvements, (*Zeiglar 2020*).

In *Robin v Botha* (1911) owner exploited the informal character of the lease to evict after a period of 3 years, an improver who had put up a building which he was declared entitled by an invalid agreement to occupy free of rent for 10 years. In this case he anticipated that building will be the property of the land owner. Held that defendant

was not a possessor in the strict sense of the term but he was a bona fide occupier. This is accepted as a relaxation for *civilis possessio*. This is a recent case law that suggested a deviation from *civilis possessio*.

In *Sibanda v Stevenson (2014)*, the courts took a flexible view that even a mala fide possessor can claim compensation on the proof of owner's mala fide intention while carrying out the improvements by the improver. In *Errington v Errington (1952)*, it was expressed the view that the courts should have the right to create law to avoid injustice.

Current application of law

Today our courts confront a problem of identification of *animus* of improver. The courts take efforts to maintain a balance between mala fide and bona fide concepts in the determination of compensation to the improver and to minimise unjust enrichments.

In *Appuhamy v Doloswela tea and Rubber factory (1921)*, it was held that the principle of *animus* should be applied more equitably rather than rigorous manner when paying compensation for improvements. Here the equity principle was accepted.

In *Sibanda v Stevenson (2014)*, a mala fide possessor was affecting improvements on non-owner's land and owner had stood by, without objecting him. Courts held mala fide improver was entitled to claim compensation on the same footing of a bona fide possessor. The rationale of this decision was the mala fide intention of landowner.

This position has been referred to, in the equity maxim which says that "a person who seeks justice should come in clean hands".

Above position has also been confirmed in *Yasohamy v Podihamy (1943)*.

In *Nugapitiya v Joseph Garvin J.* said that in an event where improver acted under genuine expectation of enjoyment of property in good faith which flowed from terms of putative agreement, his rights should be safeguarded.

The concept of occupation has been accepted by case law as a means of providing relief even situations where *civilis possession* was lacking.

An improver did erect structures outside the limits of land, that was leased out. Right of compensation was conceded by courts although the improver did not purport to possess the land *pro domino (Peiris, 1976)*.

An improver constructed some structures knowing that owner was entitled to ownership of improvements to land. But he genuinely believed that he was entitled to beneficial enjoyment of it for a definite period. Courts decided that improver is entitled under equity principles *N.O. v Van (1966)*.

In *Hewawitharana v Dangan Rubber Co. Ltd (1913)*, Wood Renton J. said “a bona fide possessor need not necessarily be the owner of property possessed, nor he has a legal right to possess it. It is sufficient if possessor is in honest belief in his mind of a right to possess it”. This is also a very flexible approach towards a remedy to an innocent party.

In *Weiback v Grobler (1986)*, courts held that mala fide improver has the right to be compensated provided, his bona fide intention is proved by him in courts.

he element of bona fide is satisfied in modern law that an improver believes that

- i. he is the owner.
- ii. he has some rights which entitle him to possess the property.
- iii. he will be able to be in possession of property.

As such in modern law bona fide includes.

- i. Juristic animus directed towards exercise of legal rights.
- ii. Factual animus which consists of a mere expectation.

In a recent case *Premaratne v Ananda Jayaratne (2015)*, the plaintiff was in possession of a land and he allowed defendant to run a welding shop in a temporary building on the land. The defendant's argument was that he expected ownership on a future day and he was entitled to compensation. However, he failed to submit a reliable cost of improvements. The courts held that a mala fide improver who cannot prove his bona fide intention was not entitled to compensation. In *Wanigaratne v Wanigaratne (1996)* a plaintiff got a land from his father and asked declaration of title to the land. The defendant was in possession and carried out improvements to the land and claimed compensation and *Ius retentionis*. Defendant's contention was that he was entitled to get the title to the land in future. However, he failed to prove that position. The courts held a mala fide possessor is not entitled to compensation.

Again in *Boshoga and others v Makolo (2018)*, the owner of a land asked for an eviction of a possessor of his land. However, possessor rejected and claimed compensation for improvements done by him on the land. In this case compensation was allowed on the basis that possessor entered into occupation with the honest belief that he was

the owner. This is identified as celebrated case where *civilis possessio* was considered, not essential to claim compensation.

Another recent case is *Sibanda v Stevenson (2014)*. Here, mala fide improver did some permanent improvements on owner's land and owner took no notice on this with mala fide intention of acquiring ownership of improvements under accession. The courts ignored mala fide nature of the improver and with attention to malicious intention of owner, compensation was recommended to improver, by relaxing the rigid application of *civilis possessio*.

Rogers (2014) expressed the view that bona fide improver is entitled for compensation but the value for the period of enjoyment of property should be deducted.

Conclusions of improver's animus.

These are laid down on flexible approach in terms of law of equity in favour of innocent improver

- Intention to possess property as owner is not necessary.
- Occupation is permissible in virtue of legal rights.
- Belief in good faith by the improver that he is legally entitled to, or will in fact be permitted to the enjoyment of the property improved.
- Hazardous character of occupation by an improver may be a negative good faith on his part, depending on the circumstances.

Relevance of Unjust Enrichment

The equitable remedy for unjust enrichment facilitates reparation against an unjust retention of a benefit. The improvement on non-owner's land very often amounts to an unjust enrichment to owner of land.

Black Law dictionary defines unjust enrichment as “It is a retention of benefit conferred by another without offering compensation, in a situation where compensation is expected. It is also defined as something which is not in accordance with accepted standards of fairness”.([google.com/search?q=definition+just+enrichment](https://www.google.com/search?q=definition+just+enrichment)) 2020. “Unjust enrichment is a legal term denoting a particular type of causative event in which one party is unjustly enriched at the expense of another and obligation to make restitution arises regardless of liability for any wrong doing” (*Peiris 1976*). In the light of above definitions, it is evident that when there is an unjust enrichment at the expense of another, the obligation of restitution arises. irrespective of liability. In spite of the existence of well-established composition of neighbourhood principle the acts of one person of the society may unjustly affect, another in the society. However, the law always dedicated to justifiable resolutions of conflicting interests resulting unjust enrichments and to maintain a balance between losses and gains which flow from a legal concept that “no one should be unjustly enriched at the expense of another” (*Hettiarachchi,2017*). Similarly the law implies that no one in the society should be unjustly affected in terms of money, by an act of another person in the society (*Peries, 2006*). Above two statements interpret the effects of unjust enrichment. It is evident that improvements on non-owner’s land give rise to unjust enrichments and perhaps losses depending on the circumstances.

In *Rankhudu v Ratshau (2010,)* the term unjust enrichment was identified and held that enhanced value should be the reparation based on unjust enrichments. On the other hand that construed the fact of equity in the light of unjust enrichments.

A general equitable principle is that a person should not profit at the expense of another and therefore should make restitutions for a reasonable value of any property, service or other benefit, that has

been unfairly received and retained, (*en. wikipedia. Org/wiki/unjust – enrichment*)2020.

Unjust enrichment is an equitable doctrine that allows recovery when a party has unjustly retained money benefit which on justice and equity belongs to another *Creary v Shields (1952)*. In *Morris Pump v Centreline (2006)* two elements identified when claiming against a party who is unjustly enriched.

- (i) Receipt of the benefit by the defendant from plaintiff.
- (ii) Injustice resulting to the plaintiff because of retention such benefits by the defendant.

Above elements are directly related to the identified problems focused in this current study.

It is strongly evident that unjust enrichment is a social injustice in different perspectives. However, remedies are formulated by the law of court to minimise the complicated issues. For this purpose, courts adopt different types of damages and equitable remedies such as specific performances (*en – Wikipedia, org / wiki /unjust – enrichment*) 2020.

It is very important that one has to assess the value of unjust enrichment to decide on the compensation as well as the real cost /loss. The area of concern in this paper has a direct relevance to the concept of unjust enrichment and proper identification of the level of enrichment will be a good guideline to bring about a solution for the current problem. The relationship between unjust enrichment and compensation can be identified as follows

- (a) Unjust enrichment > compensation.
- (b) Unjust enrichment < compensation.
- (c) Unjust enrichment = compensation.

Applicability of Compensation and Damages

In searching solutions for the identified problems, the concepts of compensation and damage play an important role in the field of improvements on non-owner's land. On what grounds the compensation should be calculated is a problem that courts confront. The damages and compensation are major areas of law of Tort as well. The improvements by non-owner cause losses while the compensation acts as hedge against such enrichment which brings about redress to the affected party (*Peiris, 1976*). It is obvious that there is a close relationship between damage, compensation and unjust enrichment.

Compensation is one of the cardinal redresses that an affected party may enjoy for his loss. Equity principles strongly recommend a reasonable compensation for losses. Since a lot of confusions and dissatisfactions emerged from various compensation methods it has become a social need to pave way to make a reasonable balance between loss and compensation from equity point of view (*Hettiarachch, 2017*).

Compensation should be the actual loss and not excessive. This view has been accepted in *Eleg v Bedford (1971)*. This is one of the concepts that has to be observed in the assessment of compensation for losses under review. This is because, over payment of compensation in turn forms unjust enrichment to other party. It is observed that damage always is not be adequate to remedy the loser because it will not be sufficient to compensate his real loss (*Haylon & Charles, 2005*).

Current study is focused mainly towards areas on which main core of the study is embodied and to suggestion of suitable guide lines under legal concepts, real estate terms guided by equity.

Some legal definitions are briefly discussed below.

Compensation is the reparation of a wrong through a delivery of an equivalent, usually sum of money (*Tilbury, 1993*).

In *Ong v Underwood (1983)*, S.A. Barakbah said “the compensation that will give the suffered party a reparation for a wrongful act and for all natural and direct consequences of the wrongful act and so far as money can compensate”.

Lord Blackburn in *Living Stone v Rawyards (1980)*, expressed the view that “where any injury to be compensated by damages in setting a sum of money to be given for reparation of damages you should as early as possible get at the sum of money which will put the party who had been injured, in the same position as he would have been in, if he not sustained the wrong for which he is now getting his compensation or reparation”.

Above discussion made a clear observation on the application of compensation concept in conjunction with the issues related to non-owner’s improvements under different circumstances. There are two options that would help to design compensation models for the identified issues.

- (a) Compensation = Cost of restoration.
- (b) Compensation = Value before and after improvements.

Summary of Findings

From the study of above judicial decisions and legal principles, following findings were derived.

1. Under law of accession land owner becomes the owner of permanent improvements effected by a non- owner.

2. The two elements enabling the right to claim for improvements were the animus of the improver and the type of improvement. The owner's mala fide intention of allowing non-owner to do improvements enables a male fide improver to claim compensation.
3. 3.Originally civilis possessio was mandatory to claim compensation but later courts adopted flexible approach by introducing various exceptions to protect innocent improve under equity.
4. 4.When improvements were effected, owner may be unjustly enriched and improver is suffered by losses. However, equitable principles have suggested remedial measures to overcome the issues. 5. The commercial value of property is increased only by useful improvements (Impensae utiles).
5. Compensation should be equal to the amount of money that is sufficient to bring the suffered party to the same position he was before such loss was caused.
6. 7. Basis of compensation would the enhanced value of property after improvements.

Basis of compensation

Method of compensation is based on the concepts of animus, *civilis possessio* of the improver and relevant case law.

In *Robbin v Botha* and *S.A. Association v Van* the following rule was identified. "A fair measure of compensation is the enhanced value less the value of plaintiff's use and occupation".

That means the value after improvements – value before improvements- value of enjoyments.

In *Mayer's Trustee v Malan*, De. Villiers J.P. stated that it is not sufficient to prove that that property has increased in value but it must be established that yield of property has increased.

Another issue arises is an event where owner does not intend to claim the benefit of the improvement as the expenditure incurred is so high where the owner is not in a position to pay such an amount without selling the property. It is also an important fact to consider whether such improvement is a benefit to the owner.

Voet expressed the view that reasonable compensation should be the difference of values before and after improvements. In *Carimjee v Abewickrema* it was held that assessment of compensation should be the enhanced value after improvements.

In *Carimjee v Abewickrama* courts was of the view compensation for improvements should be the enhanced value or cost of improvements. *Hettiarachchi (2009)*, admitted the view that compensation for useful improvements should be enhanced value or reasonable cost incurred on improvement.

De. Silva v Shaik Ali (1895) introduced another important rule in this context.

In an event where enrichment of property in value by the beneficial expenditure is in excess of the amount laid out, only the sum actually spent should be recovered from owner.

Lord Blackburn in *Living Stone v Rawyard (1980)* expressed the view that “where any injury to be compensated by damages in setting aside a sum of money to be given for reparation of damages which will put

the party who had been injured in the same position as he would have been in, if he not sustained the wrong for which he is now getting his compensation or reparation”. Perhaps the compensation may be less than the actual loss to the improver. This is a fact arises in some circumstances. In such situation again the owner enjoys an unjust enrichment.

In an event where improver’s actual cost of improvement is excessive, only a reasonable cost should be paid as compensation. In view of above facts and other legal concepts discussed a general equation can be formulated subject to variations depending on the given circumstances.

When owner is not interested in the effected improvements and in fact they are considered as a nuisance to him then the compensation should be restricted accordingly.

Therefore the compensation (C) should be equal the figure of value after improvements (VAI) minus value before improvements (VBI) minus value of enjoyments by non - owner (VE).

VAI, VBI and VE can be calculated by a general equation that reads as follows.

Appropriate Rent x Years’ Purchase @ a percentage for relevant period.

Formula is designed as under

$$C = VAI - VBI - VE$$

In case where there is no enjoyment of property after improvements the cost of improvement should be the criteria of compensation.

Few examples were considered in calculating compensation on legal principles identified from case law and they can be adjusted depending on the circumstances.

Identified Situations

1. Where a bona fide improver constructs a house or permanent improvements on non-owner's land. A mala fide improver constructs and owner stands by with mala fide intention of acquiring the ownership of improvements.
2. Where bona fide non-owner effects improvement to the building on land and occupies for a short period.
3. Extension of a building that projects on the adjoining land.
4. Improvements effected were not beneficial to the owner or he cannot afford to pay such a high expenditure.

Situation 1.

Construction of a house on non-owner's land. In such an event the best method to be adopted is reasonable "Cost Approach". If improver is bona fide he should be awarded with actual cost of construction on taking off qualities basis and all other reasonable inconveniences incurred in connection with such construction. If improver is in mala fide position and owner stands by with mala fide intention, the improver is entitled to same compensation as in the case of bona fide position. In such a construction, if cost is higher than unjust enrichment, then the enhanced value calculated under investment method of valuation which is represented in the derived formula should be the compensation under Equity.

There are some exceptions suggested.

- (i). If the construction is not interested by owner and in fact it will never enhance the value of property.

(ii). The owner's future plans on land are being disturbed by the improvement.

In such situations improver has less chances of claiming compensation and remedy may be removal of structure from the land without damaging the owner's land. Eg. the construction may be very small with one room which will never be an advantage to the owner and perhaps this may be a nuisance to him. Therefore, the cost of construction method is not justifiable, but before and after method is more appropriate which will be a lower compensation to the improver because the value is calculated on a nominal rent on the improvement.

Situation 2

A bona fide possessor structurally improves (useful improvements) a house and occupies. He is entitled to compensation and Before and After method is more appropriate to be adopted.

Equation earlier derived was that $C = VAI - VBI - VE$. The Value can be calculated by capitalising a reasonable rent in both events of Before and After improvements and value of enjoyment can be calculated by applying the same method using the difference of rents for the period of enjoyment by the possessor.

Situation 3

A and B are living adjacent to each other. Lands front a main road. A constructs a boutique room connected to his house. It extends to B's land. B later found out that the boutique room was completely built on his land. This event connected to the concepts of accession, bona fide intention and unjust enrichment. B is entitled to the boutique room under accession and however, the construction is bona fide nature and B has unjustly enriched at the expense of A. This is an event where accession conflicts with equity.

The following suggestions may be given as solutions.

- i. A has to purchase of portion of land covered by boutique room from B at a reasonable value and pay additional sum of money to cover any loss caused to B's balance land.
- ii. On the concept of unjust enrichment B can claim the room and pay a compensation calculated on reasonable cost of construction, less cost of separating the building from A's land and any other cost connected thereto. Above solution is purely based on equitable principle.

Situation 4

In a situation where owner does not desire to claim the benefit of the improvement and the reliable expenditure is so great where owner is unable to pay such amount as compensation without selling the property, the improver will not necessarily be awarded compensation. The plaintiff is not entitled to the full value of the improvement and the principle adopted in this respect, is that it should be assessed with special reference (*ex aequo et bono*) under relevant prevailing circumstances.

Conclusions

Basically in the legal scenario different issues arise in different fields where some are more familiar while others are important and strong but do not come up very often due to various socio economic perspectives. The claim of compensation for improvements on non-owner' land is one of the legal issues that falls within the second category identified above, that needs to be remedied from equity point of view. It is observed that out of the identified types, only the useful improvements will enhance the commercial value of property and ornamental improvements never give rise to such increase.

This paper identified that the criteria of decision on compensation will be the type of improvement and the animus of improver.

However courts have developed the law into various directions adhered to flexible approach on *civils possessio* for the purpose of safeguarding the innocent parties who were affected by losses in the subject area concerned. This was an equitable approach. On the other hand this is also a relaxation for the rigid application of accession complying with Equity.

The paper concluded the adverse effects of unjust enrichments resulting from improvements and the final remedy of reparation for the issues. In view of above observations, a reasonable method of computing compensation for some identified issues, were considered necessary and such model was designed leaving adjustments for other similar issues of improvements. The basis of compensation was on cash flow and cost aspects that can be adopted in different issues of the subject matter to comply with derived formula where the loss is equal to compensation.

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