

ALVAR PILLAI v. KARUPPAN.

1899.

November 22.

D. C., Anuradhapura, 321.

Tenancy under plaintiff—Refusal of tenant to deliver up possession, on expiry of lease, of a portion of the tenement—Plea that such portion was held of another—Duty of tenant to quit first, and then to litigate.

K, having been let into possession of the whole of a certain land by A, it would seem that, by the law of Ceylon, it is not open to K, even though he were owner of a moiety of it, to refuse to give up possession of the whole to A, on the expiry of his lease.

He must give up possession and then litigate about the ownership of his alleged half.

THIS was an action *rei vindicatio* brought against the defendant on the footing that he was a tenant under plaintiff, but declined to give up possession after expiry of lease. Plaintiff prayed for ejection of defendant and for his own restoration to possession. Defendant denied tenancy under the plaintiff, but pleaded that he held an undivided half share of the land under one Mohideen Tamby.

The issues framed were—First, did plaintiff lease the land in question to defendant in 1895? And second, is plaintiff entitled to the whole land as claimed, or only to half thereof?

The District Judge, after hearing evidence, found that the land originally belonged to Uduman Kangany and Mohideen Tamby; that Uduman transferred his half to plaintiff; that plaintiff had no right to lease to defendant the entire land as he did, but only a half of it; and that plaintiff was entitled to judgment only for his half share.

Plaintiff appealed.

Sampayo, for appellant.—Defendant's own witnesses have proved that he entered into the land as tenant of plaintiff. The question of title should not have been raised in the case. Having entered under plaintiff, defendant is estopped from disputing his landlord's title (C. R., Anuradhapura, 1,202; 2 C. L. R. 235, *Vet*, XIX. 2. 32).

Wendt, for respondent.—The evidence of entry under defendant is not at all clear. A document was produced in evidence to show the lease of the whole land, but that document not being notarially attested is inadmissible.

BONSER, C.J.—

The plaintiff in this case sues to recover possession of a piece of land which, he alleges, he let to the defendant for a term of years which had expired. The defendant refuses to give up

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 BONSER, C.J.

possession of the whole of the land on the ground that he was tenant of the plaintiff of a half only, and he sets up a title under another person to the other half. There is a conflict of evidence as to whether the plaintiff let the defendant into possession of the whole or only a moiety. A non-notarial document in Tamil was produced in evidence, by which the plaintiff purported to let the whole of the land to the defendant for a term of years, but that document, not being notarially attested, conveyed no interest in law to the defendant, but it confirmed the statement of the plaintiff that he let the defendant into possession of the whole, and it is inconsistent with the story of the defendant that he was tenant under the plaintiff for only a half.

Now, it appears that the plaintiff can only prove title to a half of the land. It is not necessary for the purposes of this case to state the devolution of the title, for even though the ownership of one-half of this land were in the defendant himself, it would seem that by our law, having been let into possession of the whole by the plaintiff, it is not open to him to refuse to give up possession to his lessor at the expiration of his lease. He must first give up possession, and then it will be open to him to litigate about the ownership (*see Voet XIX. 2. 32*).

In my opinion the defendant has no defence to this action. He must give up possession to the plaintiff.

WITHERS, J.—

I am of the same opinion.

Taking it as proved—and I think it is proved—that the defendant took possession of the whole of the property in question from the plaintiff, it was his manifest duty under our law to restore it to the plaintiff as soon as his term of tenancy had expired.

There are several passages of the Digest which illustrate this rule of law, but a passage in the Code, cited by Voet in his *Commentary* on this part of the law, exactly applies to this case (*IV. 65. 25: Si quis conductionis titulo agrum, vel aliam quamcunque rem accepit, possessionem prius restituere debet, et tunc de proprietate litigare.*

