

1923.

Present : De Sampayo A.C.J.

PERERA v. SUDDY.

37—C. R. Colombo, 4,734.

Civil Procedure Code, s. 344—Decree allowing defendant to remove materials of buildings put up by him—Subsequent inquiry as to what buildings were put up by defendant—Inquiry as to who planted the plantains—Adjudication that defendant planted them, and had the right to remove them—Had Court jurisdiction to make an order as to plantains after decree ?

Of consent judgment was entered for plaintiff, and defendant was allowed to remove the materials of the buildings put up by him. The decree did not specify the buildings or their number. When a dispute arose in connection with the execution of the decree, the Court held an inquiry, and held that all the buildings were put up by the defendant and the plantain bushes and sugar cane were planted by him, and directed him to remove them.

Held, that the Court had jurisdiction, even after decree, to adjudicate as to the buildings under section 344 of the Civil Procedure Code. As regards the plantain bushes and sugar cane, the Court had no jurisdiction, as there was no decree touching them, and as no question could be said to have arisen in connection with them in the execution of the actual decree.

THE facts are set out in the judgment.

E. W. Jayawardene, for the plaintiff, appellant.

J. S. Jayawardene, for the defendant, respondent.

May 25, 1923. DE SAMPAYO A.C.J.—

1923.

Perera
v. Suddu

I think this appeal must be allowed. The defendant was a tenant of certain premises under the plaintiff. This action was brought for recovery of arrears of rent and for ejection. The defendant, among other things, pleaded that he had with the consent of the plaintiff put up certain buildings on the land and claimed the right to remove the materials of the buildings. At the trial on December 6, 1922, the parties came to a settlement, and it was agreed that the plaintiff should have judgment as prayed for, with costs, but that writ of possession should not issue till January 15, 1923, and that the defendant be allowed to remove the materials of the buildings put up by him. A decree was entered on those terms. But the buildings not have been specified or their number stated, a dispute arose in connection with the execution of the decree. The defendant then made an application for *restitutio in integrum*, and this Court pointed out that as the matter was one relating to the execution of the decree the defendant's proper course was to apply to the lower Court under section 344 of the Civil Procedure Code. But when the defendant went to the Court of Requests, he enlarged his application, so as to include not merely the matter of the buildings, but also some plantain bushes and sugar cane, which he alleged he had planted on the land. After some inquiry the Commissioner held that all the existing buildings were put up by the defendant, and that the plantain bushes and sugar cane were also planted by him, and that the defendant was entitled to remove all these things. He accordingly made an order on the Fiscal that in executing the writ he should allow the defendant to remove the buildings and trees or plants. Very learned arguments took place in the Court below on the law, and on the question whether plantain bushes and sugar cane are trees or plants. But all this was beside the real question, which was as to the applicability of section 344 of the Code. For the reason above indicated, the matter of the buildings was within the competence of the Commissioner under section 344, and the evidence justifies the order made with regard to them, but as regards the plantain bushes and sugar cane, the matter cannot be dealt with under section 344 of the Code. There was no decree touching them, and no question can be said to have arisen in connection with them in the execution of the actual decree. The defendant may have some other remedy, but has no right to ask the Court to make an order which practically amounts to a new decree.

So much of the order of the Commissioner as relates to plantain bushes and sugar cane is set aside. The plaintiff failed in the Court below with regard to the buildings, but in the petition of appeal he raised the same question again. There will, therefore, be no order as to costs in the Court below or in this Court.