

1974 Present : Wijayatilake, J., Wijesundera, J., and Ismail, J.

W. M. J. BANDARA, Appellant, and J. PIYASENA, Respondent
S.C. 427/68 (F)—D. C. Ratnapura, 6647

Lessor and lessee—Termination of the lease—Whether the lessee can dispute the lessor's title and refuse to restore possession of the leased property.

A lessee is not entitled to dispute his landlord's title. Consequently he cannot refuse to give up possession of the property at the termination of his lease on the ground that he acquired certain rights to the property subsequent to his becoming the lessee and during the period of the lease. His duty in such a case is first to restore the property to the lessor and then litigate with him as to the ownership.

A PPEAL from a judgment of the District Court, Ratnapura.

K. D. P. Wickremesinghe, for the plaintiff-appellant.

D. C. Amerasinghe, for the defendant-respondent.

January 31, 1974. WIJAYATILAKE, J.—

Learned Counsel for the appellant submits that the learned District Judge has clearly held that the house in the premises in suit was the house taken by the defendant on the lease bond P4 of 5.12.1960. The question does arise as to whether the plaintiff can maintain this action for ejectment of the defendant. The defendant has sought to resist the claim of the plaintiff on the footing of certain interests in this land which he has acquired on a deed of 10.5.1962 during the period of the lease. The District Judge observes that as the defendant is a co-owner of this land, the plaintiff is not entitled to maintain this action against the defendant for a declaration of title to a building put up by him in the common property.

Dr. Wickremesinghe has drawn our attention to Maasdorp Book III page 216, where he observes that a lessee is not entitled to dispute his landlord's title and consequently he cannot refuse to give up possession of the property at the termination of his lease on the ground that he is himself the rightful owner of the said property. His duty in such a case is first to restore the property to the lessor and then litigate with him as to the ownership. (See also Voet 19 Tit. 2 Section 32) where it has been set out that the setting up of any defence of ownership of the lessee cannot stay the restoration of the property leased, even though, perhaps, the proof of ownership cannot be easy for the lessee. He ought in every event to give back possession first and then litigate about the proprietorship.

In the light of these principles which are not questioned by Mr. Amerasinghe, learned Counsel for the respondent, we are of the view that there is a merit in the submissions made by Dr. Wickremesinghe that the District Judge was in error in holding that the plaintiff cannot maintain this action against the defendant, since the defendant had acquired certain rights on 10.5.1962 subsequent to his becoming a lessee and during the period of the lease.

We would accordingly enter judgment for the plaintiff as prayed for. The plaintiff shall be entitled to the costs of action and of this appeal.

WIJESUNDERA, J.—I agree.

ISMAL, J.—I agree.

Appeal allowed.

