

*Present* : De Sampayo J and Maartensz A.J.

1925.

UDAYAPPA CHETTY *v.* GOONETILLEKE *et al.*

309—D. C. Kalutara, 11,170.

*Landlord and tenant—Lease of mortgaged premises—Action on bond—  
Sale in execution of decree—Purchaser's right to recover rent from  
sub-lessee.*

A mortgaged certain property with plaintiff, and then leased it for ten years to B, who sublet it to C. In execution of a decree on the mortgage bond, the property was sold and purchased by the plaintiff.

*Held*, that the plaintiff was not entitled to claim rent from C.

The principle of the Roman-Dutch law that a purchaser of property is entitled to claim rent due by a lessee to the original owner does not apply to sub-tenants.

**A** PPEAL from a judgment of the District Judge of Kalutara.  
The facts appear from the judgment.

*Samarawickreme*, for first defendant, appellant.

*H. V. Perera*, for plaintiff, respondent.

1925. April 1, 1925. DE SAMPAYO J.—

*Udayappa  
Chetty v.  
Goonetilleke*

This case raises a very important point, and in the absence of any definite authority we are obliged to go on the principles of law. The property involved in this case belonged to one Goonetilleke. He, by a certain bond, mortgaged it to the plaintiff on September 22, 1920. Before any action was brought on that bond, Goonetilleke, on February 28, 1922, leased the property for ten years to the second defendant. The first defendant became his tenant on a month-to-month tenancy on July 1, 1922. The first defendant, as such tenant, continued to be in occupation till the time when this case was started. The bond having been put in suit, ultimately the property was sold, by a Commissioner authorized by the Court in pursuance of the mortgage decree, on February 13, 1923, when the property was purchased by the plaintiff himself. This action has been brought by the plaintiff to eject the first defendant, and against the second defendant for damages and for costs. Both defendants filed answer, but the second defendant went out of the case in circumstances which it is not necessary to go into. But the case, so far as the first defendant is concerned, was proceeded with. The first defendant's position was that before the action was brought, he had regularly paid rent due to his own landlord, the second defendant, and after action was brought against him, he deposited the rent month after month in Court. Judgment, however, went against him for the rent from February 1, 1923, to the time when plaintiff was put in possession. The first defendant appeals from this judgment, and contends that so far as he was concerned the judgment was wrong. There is no doubt that as purchaser of the property under decree against Goonetilleke, the plaintiff is entitled to all the rent that Goonetilleke would have been entitled to under his lease to the second defendant. The question in the present case, however, is whether he is similarly entitled to payment from the first defendant, who is the second defendant's monthly tenant, of the amount of rent due by the first defendant to his own landlord, the second defendant. The Roman-Dutch law is explained in the case of *Silva v. Silva*.<sup>1</sup> That case went no further than saying that a purchaser of property, although he may not be entitled to possession as against a lessee of his vendor, will yet be entitled to the rent due by the lessee to the original owner. That is, as I said before, no authority on the point arising in this case between the plaintiff and the first defendant, who was not Goonetilleke's lessee, but who was a tenant under Goonetilleke's lessee, the second defendant. The principle under the Roman-Dutch law by which a vendee is entitled to the rent due to the vendor is that the rent stands in the place of possession, and as he cannot get possession, he must get what stands in its

<sup>1</sup> (1913) 16 N. L. R. 315.

place, namely, the rent. The same principle does not seem to me to apply to sub-tenants. There are not very direct authorities on this subject, but one may refer to the case of *Wijeratne v. Hendrick*,<sup>1</sup> where it was decided that a plaintiff who had become entitled to a certain leasehold interest could not sue for the ground rent due to his lessor from a tenant in occupation without an assignment of that right from the lessor. In this connection we may also refer to Wille on "*Landlord and Tenant*," p. 149, which appears to lay down the law in conformity with the ruling in the local case.

In these circumstances, I think the plaintiff is not entitled to claim rent from the first defendant. The decree also gives the plaintiff possession of the premises, but counsel for the first defendant, though he is prepared to argue that the plaintiff is not entitled to get even possession, does not press the appeal on that point. The judgment against the first defendant as regards rent should, I think, be set aside. It appears that the second defendant was considered to have been in default in view of certain circumstances, but at the end no judgment has been entered against him. We direct the Court's attention to this matter, and allow the plaintiff to take such step, or make such application to the District Court, as he may be entitled to. But the plaintiff must pay to the first defendant the costs of this appeal and of the District Court.

MAARTENSZ A.J.—I agree.

*Set aside.*

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<sup>1</sup> (1895) 3 N. L. R. 158.