1967 *Present :* **T. S. Fernando, J., Abeyesundere, J., and Siva Supramaniam, J.**

M. ARNOLIS PERERA and another, Appellants, *and*
M. DAVID PERERA and others, Respondents

S. C. 438 of 1962—D. C. Gampaha, 8891/L

Lease of Crown land—Renewal of it after expiry—Requirement of prescribed form—Acceptance of rent without due execution of a new lease—Effect—Crown Lands Ordinance (Cap. 454), ss. 8 (1), 96, 110.

Section 8 (1) of the Crown Lands Ordinance debars the disposition of Crown land except by an instrument of disposition executed in the prescribed manner.

Accordingly, where a lease of Crown land in favour of certain co-lessees expires after the Crown Lands Ordinance came into operation, acceptance of rent by the Crown thereafter, without a renewal of the lease executed in the prescribed manner, cannot confer on the co-lessees any legal title which may form the basis of an action between them for declaration of title to the property.

APPEAL from a judgment of the District Court, Gampaha.

Colvin R. de Silva, with *D. S. Wijewardene* and *Nihal Jayawickrama*, for the defendants-appellants.

Eric S. Ameresinghe, with *W. D. Gunasekera*, for the plaintiffs-respondents.

Cur. adv. vult.

July 19, 1967. T. S. FERNANDO, J.—

The four plaintiffs who are children of one Issan Appu instituted this action on the 3rd November 1960 against their brother the 1st defendant and a man who claimed to be the latter's tenant seeking from the District Court (*a*) a declaration that they are entitled to the possession of a boutique bearing No. 49 (formerly No. 42) standing on a land described in Schedule "A" to the plaint and depicted in Surveyor-General's Office Lease plan No. 1100 of 6th December, 1912. By an amendment of their plaint, the plaintiffs alleged that the boutique was at all times material to the action in the possession and enjoyment of the 3rd and 4th plaintiffs, while renewals of a lease of the land on which the boutique stands were obtained nominally in favour of the 1st and 2nd plaintiffs but for the benefit of the 3rd and 4th plaintiffs. They amended the prayer accordingly seeking a declaration of entitlement to possession in favour of the plaintiffs or any of them as may be determined by court.

The defendants who sought the dismissal of the action took up the position that the 1st and 2nd plaintiffs and the 1st defendant are co-lessees of the land on which boutique No. 49 stands.

The District Court granted a decree declaring the 3rd and 4th plaintiffs entitled (i) to possession of boutique No. 49 and of the Crown allotments Nos. 4271 and 4270, (ii) to have the defendants ejected therefrom, and (iii) to damages fixed at Rs. 40 per mensem.

On P1, Issan Appu, the original lessee of the Crown, obtained on lease, for a period of fifty years commencing on 1st July 1904 and ending on 30th June 1954, the allotment (in extent 3·59 perches) depicted in plan No. 1100 referred to above and as contemplated in the covenants in Part IV of P 1 erected the boutique then described as boutique No. 42. Issan Appu died in 1932 leaving a last will by which his three sons (the 1st and 2nd plaintiffs and the 1st defendant) became entitled to be regarded as lessees of the lot depicted in plan No. 1100. There were certain other lots of which they similarly became co-lessees. In 1943 the 1st and 2nd plaintiffs and the 1st defendant entered into a deed of exchange P5, according to which they distributed the enjoyment of the several Crown lots their father had leased from the Crown. On the same date that P5 was executed they gifted by P6 to their two unmarried sisters, the 3rd and 4th plaintiffs, the enjoyment, for the remaining period of their father's lease P1, i.e., until 30th June 1954, of lot No. 4271 (depicted in the afore-mentioned plan No. 1100) and lot No. 4270 with boutique No. 42. The 3rd and 4th plaintiffs appear to have enjoyed the receipt of rents of boutique No. 42 till 30th June 1954.

Some three years elapsed after the date of expiry of P1 before the officers of the Crown gave their mind to the question of the renewal of the lease or the receipt of rent in respect of the land. Rents were received in 1957 in respect of the lot in question. The 1st and 2nd plaintiffs and the 1st defendant appear to have paid in money by way of rent, the 1st and 2nd plaintiffs paying in two-thirds of the rent to the office of the D. R. O. and the 1st defendant a one-third to the Village Headman. The learned trial judge has held that only the payments made to the office of the D. R. O. can be treated as valid and has doubted the bona-fides of the action of the Village Headman in purporting to accept money by way of rent. It is unnecessary to examine the evidence on the question of payment of money in this way as rent in respect of a renewal of the lease because we are satisfied that no attention has been paid in the District Court to the imperative requirements of the law governing the grant of leases of Crown land at the relevant time, i.e., from 1st July 1954 and thereafter.

The question that was agitated in the District Court was whether the 1st and 2nd plaintiffs (on behalf, as they claimed, of the 3rd and 4th plaintiffs) had the right to be treated as the persons in whose favour the lease of the land was renewed or whether the 1st and 2nd plaintiffs and the 1st defendant had all been regarded as co-lessees of the land. There was no examination of the legality of the claim of any of the contending parties to be lessees. It appears to have been assumed in the court below that payment of money by way of rent amounted to a continuation of the lease to the persons who paid or on whose behalf such money was paid. Nor was there any consideration by the learned judge of the question whether the suit instituted by the plaintiffs was none other than a possessory suit. If it was a possessory suit, there is no doubt it was filed after the period of prescription had elapsed. It must, however, be mentioned that in the notes of argument of counsel appearing on the brief there is a reference to an argument raised by the 1st defendant's counsel to this effect, although it is right to add that no issue was raised in respect of this point throughout the trial.

In regard to the claim of the parties to be Crown lessees, we have to take note of the fact that, even before the date of expiry of P1, the Crown Lands Ordinance (Cap. 454) had come into operation on 1st September 1949. Section 8 (1) of that Ordinance enacted as follows :—

> " Every disposition of Crown land under this Ordinance must be effected by an instrument of disposition executed in such manner as may be prescribed. "

Section 96 enables regulations to be made in respect of leases of Crown land and the forms required for making such leases, and section 110 defines an " instrument of disposition " as including any instrument or document whereby a lease relating to Crown land is effected. A fresh

lease after the expiry of P1 on 30th June 1954 had, therefore, unquestionably to be effected by an instrument of disposition within the meaning of the Crown Lands Ordinance, and no receipt acknowledging rent, even if it had been issued by the proper officer of Government, was a legal substitute therefor.

The resulting position then is that no valid lease has been granted since 30th June 1954 in respect of the land on which boutique No. 49 stands, and, notwithstanding the payment and acceptance of money as rent, the argument of plaintiffs' counsel that the plaintiffs have a right to a recognition of a contractual right entered into with the Crown cannot be upheld.

Faced with the position that there is no valid lease in favour of any of the plaintiffs after the expiry of P1, Mr. Ameresinghe argued that at the least the plaintiffs must be treated as tenants of the Crown from month to month. He sought to gain some support for his contention in certain decisions of this Court relating to the rights of a lessee under a non-notarial lease, but he had to concede that the latest decision of this Court on this very point, viz., *Hinniappuhamy v. Kumarasinghe* [1], is against his argument. In that case two judges of this Court, after referring to previous conflicting decisions on the point, set out lucidly their reasons for preferring to follow the line of decisions which does not regard Mr. Ameresinghe's contention with favour. Having given my mind to the decisions referred to in *Hinniappuhamy's case* (supra), I would respectfully follow the ruling in this case and apply it in the interpretation of section 8 (1) of the Crown Lands Ordinance. That section means, in my opinion, nothing less than that no disposition of Crown land can be effected except by an instrument of disposition executed in the prescribed manner. In this view of the matter, even if the receipts which the plaintiffs can point to as having been obtained by them in 1957 have been issued, as the trial judge has found, by the officer ordinarily authorised by the Government to collect its rents, they cannot maintain the action they instituted in the absence of an instrument of disposition in their favour. Alternatively, if the action they have instituted is construed, as it must be, as a possessory action, it must again fail as not having been instituted within a year of dispossession as required by section 4 of the Prescription Ordinance (Cap. 68).

The appeal is therefore allowed, and the plaintiffs' action is dismissed with costs in both Courts.

ABEYESUNDERE, J.—I agree.

SIVA SUPRAMANIAM, J.—I agree.

Appeal allowed.

[1] *(1957) 59 N. L. R. 566.*