

1943

*Present: de Kretzer J.*

HERAS SINGHO, Appellant, and ARNOLIS APPUHAMY,  
Respondent.

154—C. R. Panadure, 9,040.

*Lessor and lessee—Partition of land leased—Eviction of lessee—Lessee's claim for damages.*

Where the undivided share of a land which was partitioned had been leased and the portion leased had been allotted to a co-owner other than the lessor, who was given compensation,—

*Held*, that the lessee was not bound to intervene in the partition action and that he was entitled to claim damages from the lessor.

**A** PPEAL from a judgment of the Commissioner of Requests, Panadure.

*H. W. Jayewardene* for the defendant, appellant.

*S. N. Rajah* for the plaintiff, respondent.

*Cur. adv. vult.*

October 22, 1943. DE KRETZER J.—

The plaintiff took on lease from the defendant the tea plantations, made by the defendant on the land called Ihalawatta, for five years at the rate of Rs. 14 a year, the full rental being paid in advance. At the time the lease was entered into a partition action for the land Ihalawatta had been instituted and had been taken off the roll as the plaintiff in that action had died. The action was subsequently revived and in the scheme of partition, which was adopted by the Court, the tea plantation fell in lots to persons other than the defendant, and, as a result, the plaintiff lost his possession of the tea. He now claims damages from the defendant. The defendant has received compensation in the partition case to the extent of Rs. 193.40. At the trial the plaintiff stated that as damages he claimed a sum of Rs. 135.50 for the unexpired portion of the lease, being the value of the coupons and the green leaf. He gave no details. In cross-examination he admitted that the lease was at the rate of Rs. 14 a year, and in re-examination stated that the

price of the tea coupons and the price of green leaf went up in 1939 and 1940. No details were given of the way in which he arrived at his figure. On that we have no evidence. The point urged on defendant's behalf was that the plaintiff should have intervened in the partition action to protect his rights and if he had failed to do so he has only himself to blame, and therefore could not claim damages. The learned Commissioner gave judgment for the plaintiff as prayed for. The same objection is raised on behalf of the defendant in this Court, and it is further urged that the plaintiff, being aware of the defect in title on the part of the defendant, he should not be allowed damages, for which proposition *Wille on Landlord and Tenant*, p. 137 is quoted. Undoubtedly plaintiff might have intervened in the partition action. But he was not under obligation to do so, for his right would be conserved if the tea plantation fell to the lot of the lessor and, if it could not so fall, his intervention in the case would not affect the situation and any question of damages between him and his lessor could not be properly settled in the partition case and would have to be the subject of a separate action. With regard to the second objection there was no defect in the defendant's title. Except for the operation of the Partition Ordinance he would have been entitled to remain in possession of the tea plantation until compensated. The partition action has been off the roll and there was apparently nothing to indicate that the action would come to a termination before five years elapsed, for it is scarcely likely that the defendant would have leased or the plaintiff have taken lease for five years if a more speedy termination of the trial was envisaged. There was a certain element of risk, but I do not think that is sufficient to disentitle plaintiff to damages. It must also be remembered that in the indenture of lease the lessor covenanted that the lessee would have peaceful and quiet possession, and the duty lay upon him to protect the lessee's rights as far as possible. I do not think there is anything in the law which is in the defendant's favour, but it seems to me that the defendant is entitled to a relief on the question of damages. The plaintiff is clearly entitled to a refund of the rent. It is true he has not claimed a refund in that form, but the amount of rent paid is involved in his claim for damages. The tea plantation was apparently valued at Rs. 193.40. There is no suggestion that the compensation was inadequate and it does seem out of proportion to award Rs. 135.50 as damages for 2½ years' possession on a lease, an amount so near the total value of the tea plantation: On the other hand compensation may have been assessed on artificial lines and may not represent the true value of the plantation. In the absence of details which the plaintiff should have given the case ought to go back for a proper assessment of damages. But rather than subject the parties to further expenses, I propose to make a rough estimate myself. Seeing that the rental was paid in advance it was probably less than what would be paid annually and, allowing a fair return and providing for the rise in the price. I think a total sum of Rs. 75 is enough. To this extent the decree will be varied. The appellant will have costs of appeal.

*Varied.*