

Present : Garvin A.J.

1921.

CADER v. HAMIDU et al.

265—C. R. Balapitiya, 13,749.

*Landlord and tenant—Evidence Ordinance—Partition decree subsequent to lease—New lease by person declared owner under the decree—Must lessee surrender possession to original lessee before becoming lessee under person declared to be owner:*

A lessee cannot refuse to pay rent on the ground that the lessor had no title to the premises leased at the date of the lease. He may prove that since the tenancy commenced the landlord's title had expired, and that he had been evicted by title paramount.

The title of the first defendant (in an interpleader action) who had leased the premises to plaintiff had been wiped out by a subsequent partition decree in favour of the second defendant.

The plaintiff without surrendering actual possession to the first defendant took a lease under the second defendant.

*Held*, that the second defendant was entitled to the rent.

“The second defendant has since the decree been entitled to eject the plaintiff and then let him into possession, and in the language of Denman C.J. it seems absurd to require him to go through the form of ejectment in order to put plaintiff into the very position in which he now stands.”

**T**HE facts appear from the judgment.

*Amarasekere*, for appellant.

November 17, 1921. GARVIN A.J.—

This is an interpleader suit. The plaintiff brought into Court a sum of money being rent of certain premises occupied by him at a rental of Rs. 12·50 a month, stating that both the defendants claimed the rent, and prayed that the defendants should be called upon to interplead, and the money paid to the person whom the Court found to be entitled to receive the rent.

It would seem that plaintiff had entered into occupation of the premises as the lessee of the first defendant under a lease for a year. After the expiry of that period he continued in occupation paying a monthly rent.

In the meantime, as a result of a partition action, the premises in question were decreed to the second defendant and another. Of this the plaintiff was aware, and the facts are not disputed.

On March 28, 1921, by deed No. 52 of that date, the plaintiff took these premises on lease from the second defendant, who, as I have said, was declared by the decree in the partition case to be the owner.

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The Commissioner dismissed plaintiff's action, so far as I can gather, on the ground that plaintiff is still the first defendant's tenant, and will continue so till he surrenders actual possession to him, and till he has done so cannot make him interplead.

But he has proceeded further, and has directed the payment of the money brought into Court to the first defendant on the footing that the tenancy still subsisted. From this order the plaintiff has not appealed, but an appeal has been entered by the second defendant.

In view of the fact that there has been previous litigation between the parties, I propose to deal with the case as a whole, and determine the rights of the parties once and for all.

So far as the first defendant is concerned, his title and that of his predecessors in title have clearly been determined. The decree to which I have already referred binding on all the world, it is binding on the plaintiff. The second defendant, whose title was declared by that decree, has asserted his title and claimed rent for the use of the premises.

Under these circumstances, the Commissioner thought that the plaintiff still remained the tenant of the first defendant, and was bound to pay to him the rent of the premises.

It is sound law that a lessee cannot refuse to pay rent on the ground that the lessor had no title to the premises leased at the date of the lease. It is equally good law, however, that he may prove that since the tenancy commenced the landlord's title has expired and that he has been evicted by title paramount.

Now the plaintiff has proved—indeed it is admitted—that by a decree *in rem* the title to these premises has since the commencement of his tenancy under first defendant been declared to be in the second defendant. He has also proved that the second defendant has, on the footing that he is the owner, demanded rent for the occupation of these premises.

The second defendant is now and has certainly since the decree referred to been entitled to eject the plaintiff and then let him into possession; and in the language of Lord Denman C.J. in *Doe v. Barton and Warburton, 11, Adolphus and Ellis, p. 316*, "it seems absurd to require him to go through the form of an ejectment in order to put (plaintiff) into the very position in which he now stands."

For these reasons I hold that the first defendant is not entitled to claim any part of the money deposited in Court as rent of these premises. It follows from what I have already said that it is the second defendant to whom this money should be paid.

It has been proved that plaintiff is not the lessee of the second defendant under a duly attested notarial deed. The second defendant as the landlord of the plaintiff may possibly have been justified in denying plaintiff's right to make him interplead with

first defendant. He has not, however, taken the objection, and it is certainly not for first defendant to complain or object that for that reason the plaintiff's action should fail.

This is essentially a case in which the rights of the parties should be defined, and the sooner the better.

For these reasons given I allow the appeal and set aside the judgment of the Commissioner of Requests. I further direct that judgment be entered for the second defendant for the money now lying in Court, and that the first defendant's claim in reconvention be dismissed. The first defendant will pay the costs of the second defendant in the Court below and in appeal. The plaintiff will bear his own costs.

*Appeal allowed.*

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