

1926.

Present: Jayewardene A.J.

ANNIE TILLEKERATNE *et al.* v. COOMARASINGHAM.

131—C. R. Colombo, 21,740.

*Tenancy—Loss of landlord's title—Action for recovery of rent—Estoppel
—Eviction by title paramount—Section 116 of Ordinance
No. 14 of 1895.*

In an action for recovery of rent, the tenant may plead eviction by title paramount, subsequent to the commencement of tenancy. Eviction may be constructive or symbolic.

A PPEAL from a judgment of the Commissioner of Requests, Colombo.

Wccerasooriya (with *Chelvanayagam*), for appellant.

H. V. Perera (with *Ameresekere*), for respondent.

August 26, 1926. JAYEWARDENE A.J.—

This is an action between landlord and tenant. The landlord sued for rent, and the tenant replies in effect that he has been evicted by title paramount, and that on such eviction his liability

to pay rent ceased. The facts of the case are not in dispute. The plaintiffs, who are the landlords, were at one time the owners of the premises in question. They were sold for arrears of rates in 1916, and purchased by the Colombo Municipal Council. A certificate of purchase in form "H" under section 146 of the Municipal Councils Ordinance, 1910, was signed by the Chairman in 1919. On the issue of such a certificate the property sold vests absolutely in the Council free from all incumbrances, and it is made conclusive evidence of the title of the Council to the property under that section. In 1920 the Council leased the premises, and its tenant occupied them till he was noticed to quit. Thereafter the plaintiffs entered into possession, and on November 1, 1924, let the premises to the defendant; and on November 14, 1924, the Council sold the right to recover the rents for ten years to one Don Juanis. The 1st defendant, in his evidence, states that the Council's lessee wanted the rent from him and threatened to sue him. He communicated with the Municipality and paid Juanis the rent. The latter says that he threatened to eject defendant unless he paid rent to him. The issues framed at the trial do not bring out the real question for decision in the case. On those issues the judgment of the learned Commissioner is clearly right. The real question is somewhat obscurely indicated in the petition of appeal, that is, that the defendant can plead as an answer to the landlord's claim for rent that the landlord's title had been superseded at the beginning of the tenancy by a title paramount, and that he, the tenant, had been evicted by the agent or lessee of the holder of that title. This is the question which I invited Counsel to discuss at the argument before me. Now section 116 of the Evidence Ordinance declares that—

"No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property ;"

This section gives legislative recognition to a principle of the law of estoppel which has long prevailed in England and in Ceylon, where, from the very earliest times, the English rules of evidence have been observed. This section is identical with section 116 of the Indian Evidence Act. It has, however, always been open to a tenant to show that the landlord's rights had expired, or that he had been evicted by title paramount vested in a third party during the pendency of the tenancy. As regards the paramount title, it is not necessary that it should come into existence after the creation of the tenancy. It might have existed before, but the eviction under it must take place during the tenancy, and

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before the rent claimed became due. The effect of the English authorities on this point is thus stated in *Spencer Bower's Estoppel by Representation* (Ch. VIII., section 3, sub-section (8), p. 267):—

“ If it is right that a tenant should be at liberty to set up that his landlord's title expired by death or effluxion of time subsequently to the creation of the tenancy by the estoppel, it is *a fortiori* just, and it has accordingly always been held, that where subsequently to the original estoppel the tenant is evicted by title paramount vested in a third person, he should be allowed to establish this fact and use it for the purpose of extinguishing completely any right to estoppel which the landlord might previously have enjoyed ; for it is here a case, not of the mere (so to speak) innocent determination of the landlord's estate, but of the dispossession of the tenant, and the destruction of his rights, contrary to the implied representation of the landlord at the time of the demise that he (the tenant) could safely accept the tenancy. ”

See also *Everest and Strode's Law of Estoppel*, p. 227 (2nd Ed.). The same rule applies under the Indian Evidence Act. (*Lodai Mollah v. Kally Dass Roy*,¹ *Usman Koja v. Akora*.²) In an American case referred to in *Bigelow on Estoppel* p. 563, a learned Chief Justice of the United States observed that “ the general doctrine of estoppel upon a tenant was not inconsistent with another rule, that where there is an eviction or ouster of the lessee by title paramount which he cannot resist, it is a good bar to the demand for rent, on the plain ground of equity, that the enjoyment of the estate is the consideration for the covenant to pay rent, and when the lessee is deprived of the benefit, he cannot be held to pay the compensation. It is not enough that a third party has a paramount title ; but to excuse the payment of rent the tenant must have been evicted or ousted under that title. ” In the local case of *Cader v. Hamidu*,³ Garvin J. said:—

“ 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. ”

In that case the title paramount, which was a title under a partition decree, came into existence after the creation of the tenancy. Nothing, however, turned on that fact.

¹ (1881) 8 Cal. 238 (241).² (1904) 15 Mad. L. J. R. 368.³ (1923) 23 N. L. R. 91.

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The title of the Municipal Council to the premises in question in this case is clearly a title paramount. The certificate of sale vests the property in the Council free of all incumbrances, and is conclusive evidence of the title of the Council to the property purchased as shown above. It stands in the same position as a final decree in a partition action, and vests the property absolutely in the Council. What is sold on the failure to pay rates is not the right, title, and interest of the person liable to pay the rates but the property itself in respect of which rates are due.

The next question is, has there been an eviction by a person claiming under a title paramount? The eviction alleged here is by the lessee, or agent, of the party in whom the paramount title is vested. The same rule must apply whether the eviction is by the paramount owner, or his agent. Earlier in this judgment I have stated what passed between the defendant and the Council's lessee before the defendant agreed to pay rent to the latter. What then happened amounts to a sufficient eviction in law. Actual physical dispossession is not necessary, but the eviction may be constructive or symbolic. A threat of eviction is sufficient, and if the tenant in consequence of such threat attorns to the claimant, he can set this up as or by way of defence to an action for rent, subject to his proving his evictor's title. This is exactly what happened in the case, and the defendant has proved the evictor's title (*18 Halsbury's Laws of England, p. 480, s. 961; Spencer Bower's Estoppel by Representation, pp, 267-8; Cader v. Hamidu (supra)*).

The defendant has, therefore, been evicted by a person claiming under a title paramount, and by such eviction the contract of tenancy between himself and the plaintiff terminated and he is not liable to pay the rent claimed. The judgment appealed from must be set aside and the action dismissed, with costs in both Courts.

Appeal allowed.