

1947

Present : Nagalingam A.J.

JOHN SINGHO, Appellant, and BEETAN SINGHO *et al.*,  
Respondents.

196—C. R. Colombo, 88,972.

*Execution—Resistance to execution of proprietary decree—Person obstructing, ostensible owner of share of premises in question—Evidence showing that resistance was in fact at the instigation of judgment-debtor—Civil Procedure Code, ss. 325, 326.*

In the execution of a decree for the possession of certain premises the officer charged with the execution of the writ was obstructed by the third respondent in whose favour there was a deed of purchase executed by a person alleged to have title to a share of the premises. The evidence, however, showed that the deed produced by the third respondent was one obtained in his favour by the judgment-debtor with a view to prevent the judgment-creditor from obtaining possession of the premises.

*Held*, that the third respondent was liable to be punished under the provisions of sections 325 and 326 of the Civil Procedure Code.

**A** PPEAL from a judgment of the Commisisoner of Requests, Colombo.

*N. Nadarajah*, K.C. (with him *H. W. Jayewardene*), for the plaintiff, appellant.

*S. W. Jayasuriya* (with him *C. Chellappah*), for the first defendant, respondent.

*H. W. Thambiah* (with him *T. Paramasothy*), for the second defendant, respondent.

*L. A. Rajapakse*, K.C. (with him *T. Paramasothy*), for the third defendant, respondent.

*Cur. adv. vult.*

January 15, 1947. NAGALINGAM A.J.—

This case furnishes a typical example of the case with which a tenant can hold his landlord at bay for a period of years notwithstanding that the Court has entered a decree in favour of the landlord for ejection of the tenant. The plaintiff-appellant instituted this action for rent and ejection against the first respondent, his tenant, as early as February 1, 1943. After trial, on March 17, 1943, judgment was entered against the tenant directing his ejection from the premises. The tenant preferred an appeal and execution proceedings were stayed in consequence. On March 1, 1944, the appeal was dismissed. The landlord took out writ of ejection and on March 3, 1944, the Fiscal's officer who went to deliver possession was obstructed by the second respondent who claimed to be a sub-tenant under the first respondent. The landlord made an application under section 325 of the Civil Procedure Code and that application was compromised between the parties whereby it was agreed that the two respondents should deliver over possession of the premises to the landlord on August 31, 1944, and that they should not in the mean time sublet the premises to a third party. Possession not having been delivered in terms of the adjustment, the landlord made application on

September 2, 1944, for writ of ejectment and after inquiry writ was allowed but was returned by the Fiscal unexecuted on September 26, 1944, on the ground that the third respondent had resisted the writ officer in his attempts to deliver over possession. The landlord was again driven to make an application under section 325 of the Civil Procedure Code, which is the present application. The application was filed as early as September 30, 1944. After inquiry the learned Commissioner dismissed the application on March 23, 1945, holding that the 3rd respondent in resisting the Fiscal acted not at the instigation of either of the other two respondents, but independently on his own in the exercise of a right claimed by him *bona fide* under a deed of purchase executed in his favour by a person alleged to have title to a share of the premises.

The learned Commissioner has found affirmatively that the resistance offered by the second respondent on March 3, 1944, was at the instigation of the first respondent and that the alleged subletting of the premises by the first respondent to the second respondent was, to use the learned Commissioner's language, "a blind to enable the first respondent to carry on the business". The learned Commissioner, however, found himself unable to arrive at a similar view in regard to the conduct of the third respondent, but I regret I cannot share the difficulties which beset him and constrained him to take a contrary view. Admittedly, the evidence given by the third respondent clearly establishes that the alleged subletting to the second respondent was a nominal one and that it was the first respondent who carried on the business even after the alleged transaction and even at the date when the second respondent obstructed the Fiscal from delivering possession on March, 1944. According to the evidence of the second respondent, it was the third respondent who had the management of the business during the time that he was regarded as the sub-tenant of the respondent. It is in evidence that the third respondent was a servant of the first respondent and that the first respondent yet visits the shop almost daily. It is true that the third respondent did produce deed 3R1 of August 10, 1944, showing that he had acquired title to a 1/24 share *inter alia* of the premises in question and that not less than a sum of Rs. 7,000 had been paid as consideration. It is significant that although the transaction was of such large magnitude, search was dispensed with, and what is more, the evidence of the notary who attested the deed, which has not been considered by the learned Commissioner, proves that the third respondent, the vendee, was never present to give instructions or even to pay the money or at any time in connection with the execution of the deed of sale but that it was the first respondent who was present and that it was he who paid the money.

It has been argued that the first respondent attended to the transaction on behalf of the third respondent out of a sense of gratitude to an old employee whose welfare was dear to his heart and that the employer's conduct should not be invested with any taint of self-interest. It has also been urged that if the transaction was one which was intended for the benefit of the first respondent himself he would probably not be so foolhardy as to invest such a large sum as Rs. 7,000 in the name of one who stands in relationship to him as only a paid servant. Though, no

doubt, the second ground urged may at first sight appear to have some merit in it, nevertheless when one takes into consideration the simple expedient of having a non-notarial document executed so as to safeguard the interest of the beneficial owner, little or no risk can be really said to be run by having the deed executed in favour of the servant, but no explanation has been suggested that would carry conviction to one's mind as to why a person in the position of a servant who, if his story be true, was investing his accumulated savings of a life-time in the purchase of a property should act with such indifference as not to take the slightest interest in regard to the transaction. The evidence of the plaintiff shows that even at the date of inquiry, that is to say, after the execution of the deed the first respondent was yet in the premises conducting the business.

In these circumstances the probabilities are preponderatingly in favour of the plaintiff's contention that the deed produced by the third respondent is one obtained in his favour by the first respondent with a view to continue to baulk all attempts of the plaintiff to obtain possession of the premises. It must be remembered that had the first respondent obtained the deed of conveyance in his own favour he could even then not have hoped to have been able to resist the plaintiff from obtaining possession of the premises. It is therefore easy to see why the first respondent had perforce to obtain the deed in favour of a third party, and who better than a trusted servant, especially if he be one who but for the assistance of the employer would be incapable of doing anything even for himself? I therefore reach the conclusion that the resistance offered by the third respondent was at the instigation of the first respondent. The second respondent appears to me to have been a tool in the hands of the first respondent just as the third respondent now is, and I am satisfied that the second respondent has no interest and takes no part in the present obstruction presented by the third respondent.

I therefore make order that the third respondent be committed to jail for a term of 30 days and that the Fiscal be directed to place the judgment-creditor in possession of the property. As there is no evidence of obstruction by the first respondent, I make no order against him but the first and third respondents will jointly and severally pay to the plaintiff the costs of the proceedings had in the Court below and of the appeal. The second respondent will bear his own costs.

*No order against the first and second respondents.*

*Appeal against the third respondent allowed.*

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