Present: De Sampayo A.C.J. and Garvin A.J.

1923.

KARUNARATNE HAMINE *v.* FERNANDO *et al.*

83—D. C. Galle, 19,934.

Lease—Covenant to keep land regularly weeded—Breach of covenant—Action for damages and cancellation—Is lessor of rural property restricted to action for damages only—Power of Court to grant both cancellation and damages.

Plaintiff brought this action for cancellation of lease and damages alleging that his lessee had failed to carry out a covenant to keep the land weeded regularly. It was contended for the defendant that a lease of rural property cannot be cancelled at all, and that the only remedy the lessor had was to ask for damages, and further that, in any event, the Court could not grant both a cancellation of the lease and a judgment for damages.

Held, that the lessee was not restricted to a claim for damages, and that he was entitled for damages for past acts and for cancellation of the lease.

THIS was an action for the cancellation of a lease of a cinnamon plantation on the ground of failure to pay the rent regularly and failure to weed the land annually, and for the recovery of Rs. 300 as damages due to the alleged failure to weed, and also for the recovery of one of the instalments of rent due.

The defendants brought into Court the instalment of rent sued for and pleaded that they had weeded the land regularly, and denied that the plaintiff sustained any damage.

The District Judge decided in favour of the plaintiff, and directed the cancellation of the deed of lease and the payment of Rs. 300 as damages.

The defendants appealed.

J. S. Jayawardene, for defendants, appellants.

F. de Zoysa (with him *C. W. Perera* and *Amarasekera*), for plaintiff, respondent.

April 25, 1923. DE SAMPAYO A.C.J.—

The plaintiff is the proprietor of a cinnamon land. In May, 1919, he leased it to the defendants for a period of five years at a stipulated rent. In the lease it was provided that the defendants should weed and clear the land on taking over possession, and thereafter weed and clear the land regularly once a year during the currency of the lease. The plaintiff brought this action in September, 1922, alleging that the defendants had failed to clear the land since the

1923.
DE SAMPAYO A.C.J.
Karunaratne Hamine v. Fernando

first clearing on the execution of the lease, and that in consequence serious damage and loss had been caused by the defendants, and he asked for damages for the past loss and also asked for a cancellation of the lease. The District Judge's finding on the facts is that the defendants not merely committed a breach of the covenant to weed the land, but their neglect was so serious that it caused permanent deterioration and destruction of the property. This finding is quite supported by the evidence in the case. It would seem that in 1922, when this action was brought, the jungle and weeds on the land were higher even than the cinnamon bushes and much above the height of a man. It is also shown that by reason of this neglect about 300 bushes per acre had been killed off. I think the District Judge's finding not only is correct on the question of fact, but the plaintiff is rightly held entitled to a cancellation of the lease.

Mr. J. S. Jayawardene, for the defendants, has argued that under the Roman-Dutch law a lease of rural property cannot be cancelled at all, and that the only remedy for a landlord is to ask for damages. I do not think the citations made by him support his contention. On the contrary, the last of the authorities he cited, namely, the case of *Silva v. Obeysekera*[1] decided that it is always a question for the Court as to whether any particular abuse of the leased property might be more appropriately dealt with by damages only, or by a cancellation of the lease. The District Judge has thought, and I think he is right, that the circumstances of the case call for the cancellation of the lease. Then it is argued that the Court could not grant both a cancellation of the lease and a judgment for damages. I have already said that the damages claimed by the plaintiff were in respect of past acts, and his prayer for relief as regards cancellation is that further damage and loss may not be incurred. Mr. Jayawardene has not been able to cite any specific authority that both damages and cancellation cannot be granted in such circumstances as these. To my mind, in principle, the Court can and ought to be able to grant relief of the kind given in this case. As regards the amount of damages, the circumstances indicate that, properly speaking, the plaintiff was entitled to very much more than Rs. 300 which the District Judge gave by way of damages. I do not think that we can interfere with his judgment on any ground. I would dismiss the appeal, with costs.

GARVIN A.J.—I agree.

Appeal dismissed.

[1] *(1922) 24 N. L. R. 97.*