

1955

Present : Weerasooriya, J.

NABISA UMMA, Appellant, and FUARD,
Respondent

S. C. 160 with Application 118—C. R. Colombo, 37,612

*Landlord and tenant—Decree for ejectment—Subsequent acquisition of title by tenant—
Right of tenant to resist execution of decree.*

Where a landlord obtains a decree to eject his tenant, it would not be open to the tenant to resist the execution of the decree on the ground that he subsequently acquired title to a portion of the leased premises from a person other than the landlord.

APPEAL, with application in revision, from a judgment of the Court of Requests, Colombo.

A. C. Nadarajah, for the defendant appellant.

F. R. Dias, for the plaintiff respondent.

November 23, 1955. WEERASOORIYA, J.—

In this case a decree was entered of consent on the 6th of October, 1952, in terms of which the defendant became liable to be ejected from the leased premises on any date after the 31st of December, 1954. Before, however, writ was taken out by the plaintiff, the defendant on the 26th October, 1954, moved the Court "not to entertain any application for ejectment without notice to the defendant". This application was made on the ground that on the 6th of March, 1954, the defendant became the owner of an undivided 3/16 share of the leased premises, having purchased that share from the plaintiff's brother (who is not a party to the action). After inquiry into this application the Court made order dismissing it, and the present appeal has been taken from that order. The defendant has also filed papers applying for revision of that order.

Mr. Nadarajah who appears for the defendant does not contend that the decree against her is bad but he says that by reason of what has happened subsequently she is entitled to resist the execution of it in so far as it is sought to eject the defendant from the leased premises. I have not been referred to any provision of law under which the execution of a decree validly entered may be resisted in the manner claimed by Mr. Nadarajah. He has cited the case of *Fernando v. Kurera et al.*¹. That case does not appear to be any authority for his proposition since all that it was decided there was that an agreement *inter partes* which, though antecedent to and not embodied in the decree, relates to the execution thereof, may be the basis for an order under s. 344 of the Civil Procedure Code that the decree should not be further executed against the judgment debtor.

The question as regards the legal position when subsequent to the tenancy agreement the tenant becomes the owner of the leased premises was considered recently by Sansoni J. in the case of *Visvalingam v. Gajawcera*². According to that judgment where the landlord files an action against the tenant for ejectment it would not be open to the tenant to plead as a defence that he had subsequent to the tenancy acquired title to a share of the leased premises from a person other than the landlord. In the present case the defendant seems to be in a weaker position than the defendant in that case, since decree has already been entered for her ejectment and the only question is whether that decree should be executed.

As no appeal seems to lie from the order of the Commissioner it is rejected. The application in revision is refused with costs.

Appeal rejected.

Application refused.

¹ (1930) 35 N. L. R. 337.

² (1954) 56 N. L. R. 111.