Present : Dalton J.

1929.

DE SILVA v. ISAN APPU et al.

159—C. R. Balapitiya, 15,963.

Estoppel—Planting agreement—Fraudulent misrepresentation as to title—Evidence Ordinance, s. 116.

Where the plaintiff induced the defendant, by a fraudulent misrepresentation of the ownership of a land to take a planting agreement from him, the defendant is not estopped from denying plaintiff's title to the land.

In such a case possession of the land by the defendant does not enure to the benefit of the plaintiff.

APPEAL from a judgment of the Commissioner of Requests, Balapitiya.

*M. T. de S. Amereseker*e, for plaintiff, appellant.

Rajapakse, for defendants, respondent.

December 11, 1929. DALTON J.—

Plaintiff, who is the appellant, sought to obtain a declaration of title to a land called Kapu-ela-addaraowita, stated to be about 1 acre in extent. The land in question is the portion marked C on the plan No. 383 at page 65 of the record.

In his plaint plaintiff sets out no title to the land, but he claims that he be declared entitled to the land and possession be given him as against the defendants on the following grounds. On May 22, 1911, he purported to give the land to the first defendant and to one Punchi Appu on a planting agreement. This agreement, the document P1, sets out that first defendant and Punchi Appu take the land in question for a period of five years from plaintiff to plant on the conditions set out. The second to the fifth defendants are the widow and children of Punchi Appu, who died about three years before the action was commenced. The lease expired in 1916. defendants remained in possession of the land, and this action was started on February 16, 1926, just under ten years from the termination of the case. The plaint sets out further that first defendant and Punchi Appu failed and neglected to plant the land in terms of the agreement, and are now disputing plaintiff's title.

The case for the defendants was that plaintiff wrongfully and fraudulently represented himself as the owner of the land described in the planting agreement of which first defendant and Punchi Appu were in possession at the time, that he had no title thereto at all, and that they had acquired title by prescription to the land.

1929.

DALTON J.

De Silva v. Isan Appu

The matter has been before this Court on a previous occasion. At the first trial the Commissioner held that any action on the lease was prescribed after six years from the termination of the lease. He therefore dismissed plaintiff's action. On appeal this judgment was reversed, it being held that there was an undoubted conflict of title, which was the substantial issue in the case. It would seem that there was some ground for the first conclusion of the Commissioner however owing to the way the pleadings were drawn, and the learned Judge in appeal especially directed that the case go back for a further trial to determine the title of the parties to the land and whether plaintiff was entitled to be restored to possession, for which purpose the parties would be at liberty to amend their pleadings. The pleadings however have not been amended, although the issues have been re-framed as follows:—

(1) Is the plaintiff entitled to the portion marked C in plan No. 383 ?

(2) Did the defendants dispute plaintiff's right to that portion?

(3) It being admitted that first defendant and Punchi Appu, father of the other defendants, got a planting voucher for this portion, are they estopped in law from questioning the right of the plaintiff ?

(4) Was the deed of agreement executed by misrepresentation of facts ?

(5) What is the value of the improvements made ?

(6) Were they done in terms of the agreement ?

The evidence taken on the first trial was by agreement used at the second trial and amplified by further evidence. After a consideration of that evidence the Commissioner has come to the conclusion that there is no evidence that plaintiff ever had possession of the land in dispute, nor has he any documentary evidence of title. On the issue of misrepresentation he finds that first defendant and Punchi Appu were in possession of the land, which may have been Crown land, and that plaintiff in 1911, whilst he was police officer, induced first defendant and Punchi Appu to take the planting agreement from him, representing that he had bought the land from the Crown and that, if they did not do so, they would have to leave the land. They discovered later that plaintiff had no right to the land, and they did not keep the terms of the agreement. They remained on in possession, plaintiff doing nothing until nine years after the termination of the agreement. Plaintiff's action was therefore dismissed.

After a perusal of the evidence and due consideration of all the circumstances, I find it impossible to disagree with the learned Commissioner on his conclusions of fact.

It is urged for plaintiff (appellant) however that, inasmuch as first defendant and Punchi Appu admitted by the agreement P1 that they were tenants of plaintiff, they were precluded by section 116 of the Evidence Ordinance from denying his title, and they were in possession for him from 1911 to the date of the bringing of the action. He had therefore prescribed for the land and was entitled to a declaration of title as against them. It seems to me a most bold argument to put forward upon the facts here, and I should be surprised indeed if any support could be found for it in any legal authority. Plaintiff's claim is based upon a fraudulent act. First defendant and Punchi Appu in 1911 had at that date been in possession of the land for some years although they had no title. In that year plaintiff induces them by a wilful and false misrepresentation of the true position to take a planting agreement under him. He never put them into possession at any time. At the termination of the agreement in 1916 he does nothing, and they remain on in possession. There had been a partition action in 1915, in which plaintiff was an intervenient and in which first defendant and Punchi Appu supported him, but a partition was found to be impossible, and in any case it would seem that this was prior to the discovery of plaintiff's fraud.

Plaintiff has not had possession for a day, unless it can be said defendants possessed for him. In view of the fraud committed, plaintiff is in my opinion unable to obtain the benefit he seeks from the agreement, or to say that the character of the earlier possession of first defendant and Punchi Appu changed thereby to possession under him. They entered into possession some years before 1911 and have remained in possession ever since ; on Punchi Appu's death his widow and children remaining in possession. The conduct of plaintiff in delaying his action for nine years after the termination of the agreement itself supports the conclusion that after the discovery of the fraud the parties regarded the agreement as of no force.

I can find nothing in section 116 of the Evidence Ordinance that debars defendants from proving plaintiff's fraud, whilst, if the decision in *Lal Mahomed v. Kallanus* [1] is good law, inasmuch as plaintiff did not put first defendant and Punchi Appu into possession, section 116 does not help him. Support for this conclusion can also be found in *Silva v. Kumarihamy*.[2] Although the facts in *Fernando v. Menika* [3] are not exactly the same as the case now before me, it does afford support for the proposition that where a person purports to possess as lessee land by mistake included in the lease, the lessee having in fact other right thereto, such possession by the lessee does not accrue to the benefit of the lessor.

I would dismiss this appeal with costs.

Appeal dismissed.

[1] *11 Cal. 519.* [2] *25 N. L. R. 449.* [3] *Balasingham 115.*