

1967

Present : T. S. Fernando, Siva Supramaniam and  
Samerawickrame, JJ.

W. IRENE FERNANDO, Appellant, and SYBIL DE SILVA  
and others, Respondents

*S. C. 443/63—D. C. Colombo, 9237/L*

*Partition action—Institution of action in 1944—Order for sale of rent-controlled premises—Issue of certificate of sale in 1959—Rights of the tenant as against the purchaser—Rent Restriction Act, No. 29 of 1948, s. 13—Partition Act, No. 16 of 1951, s. 83 (1)—Interpretation Ordinance, s. 6 (3) (c).*

Rented premises, which were subject to the Rent Restriction Act, were purchased by the plaintiff on 16th October, 1957 under a decree for sale entered in a partition action which was instituted prior to the date when the Partition Act No. 16 of 1951 came into force. The certificate of sale was issued by the Court on 23rd September 1959, but no request was made thereafter by the plaintiff to the tenant (defendant) to attorn to him in respect of the tenancy. In the present action, which was filed on 9th August 1960, the plaintiff claimed a declaration of title to the premises as against the tenant, ejectment and damages as from the date of action. The question whether the certificate of sale was valid at all was not contested.

*Held*, that the definition of "partition action" contained in section 83 (1) of the Partition Act should be read with section 6 (3) (c) of the Interpretation Ordinance. Therefore, notwithstanding the recital in the certificate of sale that the Court ordered the sale under the Partition Act of 1951 and certain references to that Act in the record of the partition action, the certificate of sale, which was the title of the plaintiff, was one issued under the Partition Ordinance in force prior to the Partition Act of 1951. Accordingly, the tenant was entitled to the benefit of the decision in the case of *Britto v. Heenatigala* (57 N.L.R. 327) that the statutory protection conferred on the tenant by section 13 of the Rent Restriction Act is not extinguished either by the decree for sale or by the certificate of sale.

**A**PPPEAL from a judgment of the District Court, Colombo.

*H. V. Perera, Q.C.* with *Carl Jayasinghe*, for the plaintiff-appellant.

*C. Ranganathan, Q.C.*, with *D. C. Ameresinghe*, for the substituted defendants-respondents.

*Cur. adv. vult.*

February 10, 1967. T. S. FERNANDO, J.—

This appeal was referred to us for hearing as a result of disagreement between the two judges before whom it was argued in the ordinary course.

The plaintiff-appellant purchased the allotment of land which is the subject-matter of the action (and which is really residential premises) at a sale held after decree entered in partition action No. 3,747. The sale took place on 16th October 1957; it was confirmed on 10th December 1958; and the certificate of sale was issued by the court on 23rd September 1959. It is common ground between the parties that the title of the plaintiff to the premises cannot relate back to any date anterior to 23rd September 1959.

The action was filed on 9th August 1960 against the 1st defendant alleging that he had been the tenant of these premises even prior to the date of sale and had failed to recognise the plaintiff as his landlord although he had been requested to do so. What was claimed in the action was a declaration of title to the premises as against the 1st defendant, ejectment and damages as from the date of action. The 1st defendant filed answer denying any request by the plaintiff after the date of the certificate of sale to attorn to him in respect of the tenancy and alleging that his landlord was one Sanoon to whom rent was being paid. After this answer had been filed the 1st defendant died on 30th June 1961, and his widow and children, the 2nd to the 4th defendants (the respondents to this appeal) were substituted in his place. In the answer filed by them after their substitution, in addition to the defence disclosed in the answer filed by the deceased 1st defendant, they took up the position that the 2nd defendant gave to the plaintiff notice in terms of section 18 of the Rent Restriction Act of 1948 and is therefore the tenant of the premises. There is no dispute that the Rent Restriction Act applies to these premises.

After trial, the learned District Judge granted a declaration that the plaintiff is entitled to the premises and an order for the payment by way of damages of a sum of Rs. 2,273·75 which sum is equivalent to the authorised rent of the premises (Rs. 107/- per mensem) for the period 23rd September 1959 to 30th June 1961, but he refused to order ejectment of the present respondents. He held also that, as title dates from the issue of the certificate of sale, the plaintiff was not entitled to request payment of rent from a time anterior thereto and, as there was no request by the plaintiff to the 1st defendant after the date of the issue of such certificate to attorn as tenant, that the 1st defendant was not in wrongful possession.

Relying on certain dicta contained in the judgment of this Court in *Cinemas Ltd. v. Ceylon Theatres Ltd.*<sup>1</sup>, it was contended on behalf of the appellant that the purchaser under a decree for sale entered in proceedings under the Partition Act, No. 16 of 1951, gets title free of all encumbrances, and that the effect of the judgment is that the status of the various interests that are not within the definition of "encumbrance" in Section 48 (1) of the Act is no different from the status of those within that definition. It does not become necessary to examine this contention unless the certificate of sale with which we are concerned upon this appeal is one issued

<sup>1</sup> (1965) 67 N. L. R. 97.

after a sale pursuant to a decree entered in proceedings contemplated by the Partition Act. Although P 12, the certificate of sale, contains a recital that the court ordered a sale under the Act, and even granting that the court intended to make such an order, learned counsel for the respondents has argued that, as this partition action was filed so long ago as 1944, it was not competent for the court to have made such an order. He has relied on the definition of "partition action" contained in section 83 (1) of Act No. 16 of 1951 and on section 6 (3) (c) of the Interpretation Ordinance. "Partition action" is defined as meaning "an action instituted under this Act" and must, ordinarily at any rate, exclude actions under the Partition Ordinance. The relevant provision of the Interpretation Ordinance permits an action such as this partition action which was pending or incompleated when the repealing Partition Act came into operation to be carried on and completed as if there had been no such repeal. This provision gives an option to continue a pending action as if the repealed law was in existence but is no authority for a continuation of the pending action under the provisions of the new Act. Mr. Perera, for the appellant, sought to avoid the effect of this provision by suggesting that the Partition Act only affected procedure but, having regard to certain material differences between the Act and the Ordinance, we do not find ourselves able to agree that the suggestion is a sound one. Therefore, notwithstanding the recital in the certificate of sale P12 and certain references to the Act in the record of the partition action, the certificate of sale which is the title of the plaintiff cannot be said to be one issued under the Act. In this situation the question does arise whether P12 is therefore a valid certificate of sale at all, but counsel for the respondents expressly stated that he does not wish to put forward at this stage any contention of that nature as certain issues which raised such a contention were expressly withdrawn by the respondents at the trial.

If this appeal has now, therefore, to be decided as if the certificate of sale is one issued under the Ordinance, the respondents are entitled to the benefit of the decision in the case of *Britto v. Heenatigala*<sup>1</sup> that the statutory protection conferred on the tenant by section 13 of the Rent Restriction Act is not extinguished either by the decree for sale or by the certificate of sale. Mr. Perera, for the appellant, questioned the correctness of this decision and suggested for our reconsideration at this stage whether the dictum of Puisse J. in *Heenatigala v. Bird*<sup>2</sup> that the certificate of sale had the effect of terminating the relationship of landlord and tenant and of constituting the purchaser an independent title holder to whom the restriction contained in section 13 of the Rent Restriction Act could not apply because the certificate conferred a title which is not subject to the tenancy agreement does not express the correct position in law. As to this we must observe that the Court in *Britto v. Heenatigala* (*supra*) expressly purported to examine this question afresh, and over ten years have elapsed since that decision. Moreover, we should be reluctant to favour an interpretation of the law which could have the effect of rendering nugatory an important provision of the Rent Restriction Act.

<sup>1</sup> (1956) 57 N. L. R. 327.

<sup>2</sup> (1954) 55 N. L. R. at 280.

The District Judge has, in my opinion, reached a correct decision and I would dismiss this appeal with costs.

SIVA SUPRAMANIAM, J.—I agree.

SAMERAWICKRAME, J.—I agree.

*Appeal dismissed.*

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