

1954

Present : Pulle J. and Swan J.

W. HEENATIGALA, Appellant, and L. G. BIRD, Respondent

S. C. 377—D. C. Colombo, 6,531L

*Rent Restriction Act, No. 29 of 1948—Section 13—Letting of co-owned premises—Partition sale thereafter—Effect of such sale on the tenancy agreement.*

Per PULLE J.—Where premises which are owned in common are let under a contract of tenancy and, subsequently, one of the co-owners purchases the premises at a partition sale, the certificate of sale has 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 cannot apply. The certificate confers a title which is not subject to the tenancy agreement.

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

*Sir Lalita Rajapakse, Q.C.*, with *Kingsley Herat* and *H. R. Gunawardene*, for the plaintiff appellant.—The purchaser, even if he be a co-owner and the former landlord, gets a new title, which is created by the partition decree which is a decree *in rem*—*Bernard v. Fernando*<sup>1</sup>, *Seedin v. Thedia*<sup>2</sup>. The trial Judge is wrong on the question of fact that there has been a fresh attornment after the sale. Even if he was right, the co-ownership continued till the issue of the certificate of title and it is only after the issue of the certificate that the co-ownership terminates and the purchaser gets the new title.

The old contractual relationship of landlord and tenant between plaintiff and defendant ceased the moment the certificate of title was issued—*Khan Bhai v. Perera*<sup>3</sup>.

The partition decree gives a title paramount and the Rent Restriction Act does not come into operation unless there was a fresh attornment of a tenancy after the certificate of sale. The position will be the same if the premises had been acquired under the Land Acquisition Act 9 of 1950. See *Megarry* (7th edition) pp. 21–22.

*E. R. S. R. Cōmaraswamy*, with *E. W. Wimalachandra*, for the defendant respondent.—Even if the decree for sale created a new title and the purchaser at the sale obtained it, there is a finding of the Judge that there was an attornment after such sale, though none after the issue of the certificate of title. The Rent Restriction Acts operate *in rem*

<sup>1</sup> (1913) 16 N. L. R. 438.<sup>2</sup> (1951) 53 N. L. R. 63.<sup>3</sup> (1924) 26 N. L. R. 205 at 208.

and not *in personam*. The Act imposes a *status* on the house which binds both landlord and the tenant. It operates *in rem*. See *Megarry*, page 16.

If the partition decree is permitted to override the provisions of the Rent Restriction Act it will enable a co-owner of premises to file a partition action to enable him to eject the tenant.

[PULLE J.—One is permitted to evade the provisions of a statute, so long as one acts within the law, as in Income Tax evasions.]

*Cur. adv. vult.*

February 11, 1954. SWAN J.—

In this case the appellant sued the respondent for declaration of title to and ejectment from premises No. 246, Skinner's Road North, Colombo. The appellant had purchased these premises at a partition sale in case No. 5,744/D. C. Colombo. The appellant was the plaintiff in that action. He claimed and was declared entitled to  $\frac{1}{4}$  share of the premises in question along with the premises on either side of No. 246, namely Nos. 244 and 248. The decree for sale was entered on 6th July, 1950. The sale took place on 12th October, 1950. It was confirmed on 30th January, 1952. Certificate of sale was issued on 5th February, 1952.

The respondent was occupying the premises in question both before and after the sale as the tenant of Mr. S. E. A. Perera who collected the rents of all three houses and distributed the amount among the co-owners. The respondent's case was that shortly after the sale the appellant came and told him that he had purchased the premises and that he was the "new landlord". That was sometime in October, 1950. The respondent therefore took the rent for November to the plaintiff. He says that the plaintiff requested him to hand it to his Proctor. The Proctor however would not accept it and he deposited it, and further rents, with the Rent Control Board.

Upon this evidence the learned District Judge held that there was a contractual relationship of landlord and tenant between the appellant and the respondent. Assuming that the appellant cannot rely upon the strength of his certificate of title to eject his own tenant, I shall examine the evidence carefully in order to see whether this finding of the learned District Judge can be supported. It is unfortunate that the statement of the respondent that the appellant requested him to send the rent for November to his Proctor was made in answer to the following question put by the learned District Judge himself :—

Q.—He requested you to send it to his Proctor, S. Kanagarajah ?

A.—Yes.

When the respondent wrote letter D3 to Mr. Kanagarajah enclosing a money order in payment of the rent for November the latter promptly

replied by D4 that he could not accept the money as he had already written to the respondent requesting him to leave the premises and surrender possession to his client. The last sentence of that letter is significant. "I presume", says Mr. Kanagarajah, "that your letter of the 6th instant is a sequel to my letter to you of the 20th ultimo."

The learned Judge has entirely lost sight of the fact that when the respondent wrote D3 to Mr. Kanagarajah he was already under notice to surrender possession of the premises. In these circumstances the most that one can infer from the conversation between the appellant and the respondent on the occasion of the appellant's visit after the sale is an intimation that the respondent could make any arrangement he cared to make with the appellant's Proctor. There could not have been a concluded contract of tenancy at that time because if the appellant was willing to accept the respondent as his tenant there was hardly any need to refer him to his Proctor. The evidence discloses that one of the tenants upon receipt of notice to surrender possession from Mr. Kanagarajah obtained time to leave and did in fact surrender possession before this case came up for trial.

The only other point to consider is whether the respondent could claim protection from ejection by reason of the Rent Restriction Act. When it was pointed out to learned counsel for the respondent that even on the assumption that there existed a contractual relationship of landlord and tenant between the appellant and the respondent by reason of the fact that Mr. S. E. A. Perera collected the appellant's share of the rent from the respondent the alleged tenancy could only be with regard to a quarter share of the premises he did not think it worthwhile to pursue the matter and stated that his client was willing to surrender possession if he was given time.

The appeal is allowed with costs. Judgment will be entered for the appellant declaring him entitled to the premises, for ejection and for damages at Rs. 29.58 per mensem from 5th February, 1952, until recovery of possession and for costs of action. In order to mitigate the hardship of immediate ejection we direct that if the respondent pays all damages up to 31st January, 1954, the damages for February, 1954, together with costs of appeal on or before 20th March, 1954, the damages for March and April, 1954, together with costs of action on or before 20th April, 1954, and thereafter the damages for each month on or before the 20th of such month writ of ejection will not be executed before 30th June, 1954. In default both writs to issue forthwith without notice to the respondent.

PULLE J.—

I agree that the appeal should be allowed and time granted to the tenant to vacate the premises on the conditions set out by my brother. Even accepting the finding of the learned District Judge that there was a

new contract of tenancy entered into between the plaintiff and the defendant shortly after the sale on the 12th October, 1950, the certificate of sale issued on the 5th February, 1952, had the effect of terminating the relationship of landlord and tenant and of constituting the plaintiff an independent title holder to whom the restriction contained in section 13 of the Rent Restriction Act, No. 29 of 1948, could not apply because the certificate conferred a title which was not subject to the tenancy agreement.

*Appeal allowed.*

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