

1934

*Present: Dalton S.P.J*SUNDRA AMMAL *v.* JUSEY APPU.

10—C. R. Colombo, 92,115.

Landlord and tenant—Landlord's title disclaimed—Notice to quit not necessary.

A tenant who disclaims to hold of his landlord is not entitled to have the action dismissed for want of a valid notice to quit.

A PPEAL from an order of the Commissioner of Requests, Colombo.

N. E. Weerasooria, for plaintiff, appellant.

P. Tiyyagarajah, for defendant, respondent.

October 5, 1934. DALTON S.P.J.—

This is an appeal arising out of a summary proceeding under the Small Tenements Ordinance, No. 11 of 1882.

The person claiming as landlord in this case is a woman, stated to be old, and a Brahmin, whose business is done for her by her grandson. She duly authorized these proceedings, and an affidavit by her grandson Ramanatha Kurukkal was filed, stating that he, on or about June 15, 1932, let the premises, No. 40, Captain's Gardens, Colombo, to Jusey Appu, the alleged tenant, at a monthly rental of Rs. 2.50 a month. He further alleged that on September 1 he gave the tenant notice to quit on September 30 and deliver up possession.

In reply Jusey Appu filed an affidavit denying he was the tenant of the landlord here. He pleaded that in or about the year 1911 the then owners of the land, one Seeni Ayar and other co-owners, gave him permission to build the tenement No. 40, and that he had lived in it since then without paying any rent. He claimed that he had since 1911 acquired a prescriptive title to the tenement, and presumably to the land on which it stands. He admitted he had paid taxes to the Municipality through the landlord's husband, Kailasanatha Kurukkal, who had died some time in 1932.

Issues were then framed:—

- (1) Was due notice to quit given?
- (2) Was there a tenancy?

and evidence was led.

Ramanatha Kurukkal gave evidence alleging the premises in question belonged to his grandfather Kailasanatha Kurukkal, who had let them about 1918 or 1920 to Jusey Appu with his wife's consent. During that time he stated the tenant paid Rs. 4.50 a month. The Grandfather died some time in the year 1932, and the witness states his grandmother sent for Jusey Appu and the latter agreed to continue the tenancy under her at the rate of Rs. 2.50 a month, paying rent that became due up to July 1, 1933. Thereafter he paid no rent and notice was given him. The witness could produce no receipt books.

An Inspector of the Assessor's Department of the Municipality was called to state he had assessed the premises, and an objection was made to the assessment of tenement No. 40 by the landlord here as owner. He went to the premises and found it was worth Rs. 2.50 a month, but took no statement from the tenant. Another witness was called, who denied the truth of Jusey Appu's allegation in his affidavit that he had lived in this tenement since 1911. At the time of the riots in 1915 he stated that Jusey Appu lived in another garden. He corroborates Ramanatha Kurukkal on this point.

At the close of the case, and at the end of the judgment dismissing the claim, the Commissioner granted an application made by the landlord's proctor to produce the title deed of Kailasanatha Kurukkal for the premises. This deed (P 2) is dated July 30, 1928, and is a conveyance to Kailasanatha Kurukkal by the Chairman of the Colombo Municipality. Why the Commissioner allowed it to be produced and accepted it at that stage is not stated. It is suggested he may have had some doubt as to the correctness of his judgment on seeing the document.

For the defence Jusey Appu gave evidence, repeating the statements made in his affidavit. He denied he had paid rent at any time to anyone. He did not call any of the persons who he said had authorized him to put up the tenement in 1911, although he said one of them was still alive and in Court at the time he was giving evidence. He called in fact no witnesses at all except his wife, although he stated in his affidavit that he had a number of reliable witnesses to prove his case. The title deed P 2 was of course not put to him as it had not been produced at that stage, but he admits he had made payments of Rs. 4 a month to Kailasanatha Kurukkal apparently over a period of about ten years. These payments he says were for rates due from him, which he paid through Kailasanatha Kurukkal. The receipts he got for these payments he stated had been taken away by Kailasanatha Kurukkal, but he does not give any reason why he should regularly pay his rates through a person who he says had no right either to the land or tenement. It is urged for the landlord that the payments made by Jusey Appu were really payments of rent to her husband.

On this evidence the Commissioner states the landlord has not, in his opinion, proved the contract of tenancy. The reasons he gives are short,

but are difficult to follow. I have had the shorthand notes of the Commissioner's judgment again transcribed but can only find one probable error in the transcription signed by the Commissioner, the word "issue", which makes no sense at all, probably being a mistake for the word "usual".

He states that the landlord "is and may have been the owner of the premises in question, but in this case the usual material in evidence has not been produced, such as the contract of tenancy or counterfoils to show payments of rent and such points". He does not refer to the admitted payments of Jusey Appu or say what he thinks of his explanation, although he appears satisfied that he has been residing on the land only since 1918. He then concludes that there is no "tangible evidence" which points to the fact that at some time or other Jusey Appu was the tenant of the landlord. There is certainly evidence to that effect and that he in fact made an agreement with the landlord, although not documentary evidence, but the Commissioner does not say whether or not he disbelieved the evidence of Ramanatha Kurukkal. If he has directed himself, as he appears to have done, that there must be evidence of the tenancy that answers to the description he gives, he has clearly misdirected himself. In this Court, however, I feel unable to assess the worth of the evidence led, and the result is that there must be a fresh trial.

On the question of notice I understood counsel for respondent, Jusey Appu, conceded that the issue did not arise, since a tenant who disclaims to hold of his landlord and puts him at defiance is not entitled to have the action dismissed for want of a valid notice to quit. (See *Muttu Natchia v. Patuma Natchia* ¹.)

The appeal is allowed, the costs of appeal following the event of the further trial.

Appeal allowed.

