1956 *Present :* **Pulle, J., and Weerasooriya, J.**

SABAPATHIPILLAI, Appellant, *and* RAMUPILLAI, Respondent

S. C. 551—D. C. Vavuniya, 1,120

Landlord and tenant—Informal lease bond—Its effect as contract of monthly tenancy—Sale of leased premises—Right of purchaser to sue tenant for rent—Attornment.

When a person is in occupation of land as lessee under an informal document which does not comply with the provisions of section 2 of the Prevention of Frauds Ordinance, the lease must be regarded as from month to month and not for any longer period stated in the document.

When leased premises have been sold by the landlord, the tenant who receives notice of the purchaser's election to recognise him as tenant is not entitled to deny his attornment to the purchaser if he continues to be in occupation without informing the purchaser that he does not elect to attorn to him.

APPEAL from a judgment of the District Court, Vavuniya.

T. Arulanandam, with *S. Sharvananda*, for the defendant-appellant.

No appearance for the plaintiff-respondent.

Cur. adv. vult.

March 16, 1956. WEERASOORIYA, J.—

The plaintiff-respondent brought this action against the defendant-appellant for a declaration of title to a paddy land called Puliyadikani more fully described in the schedule to the plaint. The plaintiff based his title to it on deed of sale P1 dated the 1st December, 1951, by which one Ulaganathan conveyed it to him. Ulaganathan had previously on an informal document D6 dated the 13th May, 1950, leased the same land to the appellant for a period of five years, and at the time of the execution of P1 the appellant was in occupation of the land as lessee under Ulaganathan.

Although one of the causes of action set out in the plaint was the appellant's denial of the respondent's title to the land, the finding of the trial Judge that the respondent is the owner was not canvassed by Mr. Sharvananda who appeared for the appellant at the hearing before us. He confined the appeal to grounds (6), (8) and (10) of paragraph five of the petition of appeal the relevant portions of which read as follows :—

(6) " The learned District Judge holds that the defendant-appellant paid to M. Ulaganathan (the defendant-appellant's lessor) the

rent for the cultivation year 1952 to 1953 (Issue 20). Yet he holds that the defendant-appellant is liable to pay damage to the plaintiff-respondent for that period also ".

(8) " ..... The learned District Judge erred in law in awarding damages to the plaintiff-respondent for the Kalapokam season 1953–1954 when admittedly the land was not cultivated by him ".

(10) " The tenancy created by D6 has not been lawfully terminated by due notice nor has there been any attornment of any contract by the defendant-appellant ".

In order to arrive at a finding on these grounds it becomes necessary to consider the respective rights and obligations of the appellant, as the lessee on D6, and the respondent who became the purchaser of the leased land while the lease was in operation. As the document D6 does not comply with the provisions of Section 2 of the Prevention of Frauds Ordinance (Cap. 57) the lease must be regarded as from month to month, and not for the five years stated in D6, *Ukkuwa v. Fernando* [1]. The position of a purchaser to whom the original landlord has sold the premises which, at the date of sale, are in the occupation of a tenant under an existing lease has been considered in a number of decisions of this Court. In the case of *Allis v. Sigera* [2] it was held by Withers J. (sitting alone) that where a land which was subject to a lease was sold the purchaser acquired the right to the payment by the lessee of the rent due under the lease and could sue him for the same provided the latter had notice of the sale. It is not clear from the judgment, however, whether the decision implies that the tenant is bound to continue as tenant under the purchaser without any option. In the case of *Silva v. Silva* [3], which is a decision of two Judges, Pereira J. expressly refrained from deciding (for the reason, as stated by him, that the question did not arise in that case) whether the tenant is left with no option but to accept the purchaser as his landlord. But certain observations in the separate judgment of de Sampayo J. in the same case appear to suggest the view that even in the absence of an attornment by the tenant to the purchaser the latter has the right not only to claim the rent from the tenant but also to enforce against him the other covenants in the lease or claim damages for a breach of them. In the case of *Wijesinghe et al. v. Charles* [4] (also a decision of two Judges) de Sampayo J. who delivered the judgment of the Court observed that although the purchaser could enforce payment of the rent and the performance by the tenant of his other obligations under the lease he was not compelled to be content to take possession of the land subject to the tenant's right to occupation and he therefore could, if he elected, bring an action against the vendor to implement the sale by giving him free and exclusive possession ; and it was held that in such a case the contract of tenancy between the vendor and the tenant continues and, notwithstanding the sale, the vendor (and not the purchaser) could terminate the contract after notice to the tenant. He further observed that the tenant also had the option either

[1] *(1936) 38 N. L. R. 125.*
[2] *(1897) 3 N. L. R. 5.*
[3] *(1913) 16 N. L. R. 315.*
[4] *(1915) 18 N. L. R. 168.*

to remain as tenant under the purchaser or cancel the lease. These observations, however, do not appear to be fully reconcilable with the view also expressed by him in the judgment that it was open to the purchaser to sue the tenant in ejectment, and it is not clear whether he intended to say that this right accrues to the purchaser even where the tenant had expressly elected not to attorn to the purchaser but to continue as tenant under the original lessor (the vendor). While, therefore, the position of a purchaser *vis a vis* a tenant who has not attorned to him may need clarification in an appropriate case in view of these decisions, I can find nothing in them which runs counter to the well recognised rule that where the tenant has attorned to the purchaser the latter is entitled to look to the former for payment of the rent.

In a more recent case, *de Alwis v. Perera*[1], Gratiaen J. on a consideration of the earlier decisions to which I have referred, took the view that when the purchaser elects to recognise the tenant but the tenant does not specifically attorn to him, the tenant who remains in occupation (with notice of the purchaser's election) may legitimately be regarded as having attorned to the purchaser. This view, presumably, is on the basis that a tenant who has received notice of a subsequent purchaser's election to recognise him as tenant cannot be heard to say that he did not attorn to the purchaser if he continued to be in occupation without informing the purchaser that he did not elect to attorn to him. The position in the present case is precisely this.

The learned trial Judge has found that within a few months of the respondent's purchase of this land he informed the appellant about it but the appellant without expressly denying the respondent's right to the lease rent led him on " with vague promises and hopes " which he (the appellant) did not intend to fulfil. These findings are amply borne out by the evidence of the respondent which the learned Judge seems to have accepted even though he did not accept his evidence of a fresh oral lease entered into between himself and the appellant in July 1952 under which the appellant is alleged to have undertaken to pay him 36 marakkals of paddy as lease rent in respect of the ensuing cultivation periods. In my opinion, on these findings the appellant cannot be heard to say that prior to the cultivation period 1952–1953 he had not attorned to the respondent as the purchaser from the original lessor. Mr. Sharvananda relied on the Judge's answer in the negative to issue No. 9 (whether the appellant was liable in law as the respondent's tenant) as a finding that even in the circumstances accepted by the Judge there was no attornment by the appellant to the respondent. But for the reasons already given by me I think that the answer to this issue should have been in the affirmative.

The position, therefore, is that the payment by the appellant of the rent for the cultivation period 1952–1953 to Ulaganathan did not absolve the appellant from payment of that rent to the respondent. Although the rent for the period is only 12 marakkals of paddy, the learned Judge

[1] *(1951) 52 N. L. R. 433 ; 41 C. L. W. 100.*

has awarded the respondent the value of 36 marakkals of paddy, instead, as damages. This award cannot be supported, and the respondent will be entitled to only the value of 12 marakkals of paddy for that period.

As regards the cultivation period 1953–1954, even on the finding of the learned Judge that the appellant abandoned the land some time after the 15th September, 1953, the appellant would be liable to pay the respondent the rent for that period as no prior notice determining the tenancy had been given to the respondent. In respect of this period too the respondent was awarded the value of 36 marakkals of paddy as damages. This award is also wrong as the respondent is entitled to the value of only 12 marakkals of paddy.

Although the learned trial Judge found that the appellant had abandoned the land some time after the 15th September, 1953, he also held that the respondent is entitled to a decree in ejectment of the appellant and to damages at the rate of 36 marakkals per year till the appellant is restored to possession. But at the trial the respondent in the course of his evidence restricted his claim for damages to the two cultivation periods 1952–1953 and 1953–1954. That part of the judgment and decree awarding him damages in respect of any period subsequent to the 1953–1954 cultivation period cannot, therefore, stand.

At the hearing before us Mr. Sharvananda cited certain other decisions which deal with the question of attornment. I need refer to only one of them, *Ukkuwa v. Fernando* (supra), where the earlier cases are discussed. This case dealt with the respective rights of a monthly tenant and a person who had a subsequent notarial lease from the same landlord. It was held that in the absence of attornment by the monthly tenant to the tenant under the notarial lease or an assignment in favour of the latter by the landlord of the contract of monthly tenancy with notice to the monthly tenant, it was not open to the tenant under the notarial lease to determine the monthly tenancy. In view, however, of the conclusion reached by me that the appellant must be regarded as having attorned to the respondent, it is not necessary to examine in detail this and the other cases cited by Mr. Sharvananda all of which deal with the rights of several lessees under the same landlord and do not appear to be completely analagous to the case of a purchaser of land which is subject to a lease.

The judgment and decree appealed from are varied so that for each of the cultivation periods 1952–1953 and 1953–1954 the appellant will pay to the respondent the value of 12 marakkals of paddy instead of 36 marakkals, and no damages will be payable thereafter. In the result the respondent's right to a declaration of title to the land and to a writ ejecting the appellant therefrom (if he is still in occupation) and to costs of suit will not be affected by this variation. Since the appellant has succeeded in this appeal only in part he will be entitled to half his costs of the appeal from the respondent.

PULLE, J.—I agree.

Decree varied.