

1947

Present: Dias J.

NAZEER *et al.*, Appellants, and HASSIM, Respondent.

271—C. R. Colombo, 96,001

Partition action—Co-owner's transfer, pending the action, of the share which would be allotted to him in the final decree—Rights of transferee—Partition Ordinance, s. 17.

Landlord and tenant—joint landlords—Right of each landlord to share of rent—Several persons claiming rent as landlords—Right of tenant to call upon them to interplead—Civil Procedure Code, s. 632.

Where, pending a partition action, some of the co-owners covenant to convey absolutely all the shares, right, title and interest which will accrue to them under and by virtue of the final decree in the partition action, the other contracting party obtains an immediate interest in the property, but the title can only accrue upon the entering of the final decree.

In the case of a plurality of landlords, each of them is entitled to claim his share of the rent from the tenant, unless there is some express agreement to the contrary.

Obiter, where a tenant is sued for rent by a stranger as landlord, section 632 of the Civil Procedure Code does not prevent the tenant from suing his immediate landlord in interpleader.

A PPEAL from a judgment of the Commissioner of Requests, Colombo.

E. B. Wikramanayake (with him C. Renganathan), for the plaintiff, appellants.

M. I. M. Haniffa (with him M. Abdulla), for the defendant, respondent.

Cur. adv. vult.

May 20, 1947. DIAS J.—

The three appellants, their brother and sister Sitti Rowha (now deceased) are the owners of an undivided half of the premises known as No. 248, Main Street, Colombo. The other undivided half is said to belong to a Mrs. Nakeem.

The defendant is the monthly tenant of the *whole* premises. The practice was for him to pay one half of the rent to Mrs. Nakeem and the other half to A. J. M. Nazeer, the first plaintiff, for and on behalf of the co-owners of the other half.

In the case of a plurality of landlords, each of them is entitled to claim his share of the rent from the tenant, unless it has been expressly agreed to the contrary—*Buddharikita Terunnanse v. Gunasekara*¹, *Panis Appuhamy v. Selenchi Appu*² and *Weeraratna v. Abeywardene*³.

The premises are the subject of a partition action—D. C. Colombo, Case No. 74.

On the occasion of the marriage of Sitti Rowha, the brothers and the prospective husband Keyath entered into the deed P 1 dated September 9, 1939. The brothers covenanted to transfer, grant, and convey to Sitti Rowha absolutely as a marriage settlement all the shares, right,

¹ (1895) 1 N. L. R. 206, *Wille on Landlord and Tenant* (3rd ed.) p. 163, *Tambyah on Landlord and Tenant* p. 104.

² (1903) 7 N. L. R. 16.

³ (1934) 36 N. L. R. at pp. 140-141.

title and interest in these premises which shall accrue to them under and by virtue of the final decree in the partition action, and of the proceeds of sale, in the event of the Court decreeing a sale of the premises; and that in the meantime, and until such time as their shares or the proceeds of sale as the case may be is granted as aforesaid, the brothers agreed to give Sitti Rowha the share of the rent accruing to them from the said premises No. 248.

It is to be observed that the covenant to pay the rent to Sitti Rowha is to her alone and not to her heirs, etc. Except for the fact that the deed is entered into with Keyath, he does not otherwise figure in the deed at all. The nature of a deed like P 1 was considered in the case of *Manchanayake v. Perera*¹. It was laid down that while a deed like P 1 passes an immediate interest in the property and is not merely an agreement to convey in the future, the right or title comes into existence only upon the entering of the final decree in virtue of the *jam tunc* principle of the Roman-Dutch Law or the equitable principle of the English Law that when the property comes into existence, the assignment fastens on it".

The partition action, we are informed, has abated, so that it is problematical when the final decree will be entered, if at all. Furthermore, Sitti Rowha died in March, 1944. The stipulation to pay the rent to Sitti Rowha ceased with her death, for there is no stipulation in favour of her heirs. The deed P 1, therefore, for all practical purposes, is valueless. What rights Keyath may be able to claim under it we are not concerned with.

On the death of Sitti Rowha issueless and intestate, her husband as a sharer under Muhammedan Law would become entitled to an undivided half of her undivided share in these premises, while the other half of her share would devolve on her residuary heirs, her brothers. Therefore, on her death Keyath became a co-owner of the premises. He would, therefore, be entitled to claim from the defendant his share of the rent. The defendant who is a mere monthly tenant could not be expected to know, and would not know, what that share is. It was the duty of the landlords to inform him to whom he had to pay and what he had to pay them.

For four or five months after Sitti Rowha's marriage Nazeer paid the brothers' share of the rent to the lady. Then disputes arose, and Sitti Rowha left the brothers and took up her residence with Keyath. Thereupon, Nazeer on behalf of the other brothers and himself, requested the defendant to pay the full half share of the rent to the sister. I cannot hold that this created a new tenancy between the defendant and Sitti Rowha. There was only one tenancy over the whole premises. Some of the landlords instead of demanding their shares of the rent from the tenant, requested him to pay it to a person designated by them. There is nothing improper in that.

After the lady's death, however, the position changed. The defendant could not pay the rent to the lady who was dead. A new co-owner had become a landlord. The obligation of the defendant was to pay

¹ (1945) 46 N. L. R. 457.

the landlords their respective shares of the rent. The brothers and Keyath fell out. The plaintiffs demanded the rent, and after the letters P2-P5 had passed between them, the defendant paid the plaintiffs a sum of Rs. 80 representing the rent for the months of April and May 1944. Keyath, who appears to have fallen out with his co-owners, then demanded the rent from the defendant, and, eventually, sued him in C. R. Colombo, Case No. 95,852. The defendant might then have interpleaded. Section 632 of the Civil Procedure Code does not prohibit a tenant in the situation of the defendant from calling upon several landlords who are each claiming the rent to interplead—cf. *Mather v. Theivapillai*¹. He did not do so, but merely called Nazeer as his witness. The Court held against the defendant. That decree does not affect the case because the plaintiffs to this case were not parties to it. The Court having held that the defendant was the tenant of Keyath, ordered him to pay rent to Keyath.

The plaintiffs now sue the defendant claiming a sum of Rs. 40 as the rent due for the month of June 1944 and ask for a decree that the defendant should thereafter pay the rent to them. The defendant counter-claims the sum of Rs. 80 already paid to the plaintiffs.

The Commissioner of Requests dismissed the plaintiffs' action and upheld the claim in reconvention, holding that on the execution of P1 Sitti Rowha obtained an immediate interest in the half share, and that the defendant by operation of law had to attend to her. I am of opinion that this view is erroneous. No doubt the lady obtained an immediate interest in the property, but her title could only accrue on the entering of the final decree. I am unable to hold that on the execution of P1 a new tenancy came into existence. The obligation of the defendant was always the same. It is his duty in the case of a plurality of landlords to pay each of them his or her share of the rent, unless there is some express agreement to the contrary.

If the parties cannot settle this trivial dispute, I set aside the decree appealed from, and send the case back for a trial *de novo* on fresh pleadings before another Commissioner of Requests. Until the case is ripe for trial, the incidental steps may be taken before the Commissioner who tried this action. Keyath will be added as a plaintiff, and if he objects he will be added as a defendant. The plaintiffs and Keyath will in their pleadings set out their respective claims to the rent and the fractional shares they claim. The money lying to the credit of C. R. Colombo, Case No. 95,852 will be transferred to the credit of this case, and will be paid to the party or parties ultimately declared entitled to receive the same.

The heirs of any deceased co-owners will have to be added. In adjudicating on the rights of the parties the Commissioner will not lose sight of the decree in C. R. Colombo, Case No. 95,852 as between Keyath and this defendant.

The costs of these proceedings both here and below will be borne by the parties. All other costs will be in the discretion of the trial Judge.

Decree set aside.

¹ (1936) 16 C. L. Rec. 218.