

Present: Ennis and Schneider JJ.

1922.

ARUNASALAM CHETTY *v.* BILINDA *et al.*

68—D. C. Chilaw, 6,331.

Possession under an invalid lease for over ten years—Does lessee acquire a title by prescription to possess the land as lessee for the remainder of the period of lease?

Principal and Agent—Power of attorney—Emphyteusis.

Defendant took on lease from the attorney of N a land for twenty years. The attorney did not sign the lease in the manner prescribed by the power of attorney, but signed his own name, and the lease was consequently not valid. N after ten years sold the land to the plaintiff.

Held, that as the defendant had possession under the lease for over ten years, he was entitled to possess the land for the remaining period by right of prescription.

Bawa, K.C. (with him *H. V. Perera*), for the appellant.

Pereira, K.C. (with him *E. W. Jayawardene* and *Samarawickreme*), for the respondent.

October 11, 1922. ENNIS J.—

This was an action for declaration of title to 11/24 of a land. It is common ground that this 11/12 belonged to one Ismail Natchia, and that some of it was conveyed to her on March 3, 1902. She was in India, and gave a power of attorney to her brother Madana Kanni to act for her in Ceylon. Madana Kanni on March 9, 1902, leased the land for twenty years to his son-in-law Mohammodu Mohideen, who died leaving as his heir one Ibrahim Saibo, who sublet the land to the defendant. On June 6, 1905, Ismail Natchia conveyed this 11/12 to Alima Umma and Sara Umma. Alima Umma then conveyed 11/24 to the plaintiff on January 23, 1917.

1922.

ENNIS J.

Arunasalam
Chetty v.
Bilinda

On July 7, 1919, Ismail Natchia conveyed 11/12 to the added parties in the action. The learned Judge found in favour of the defendant, and the plaintiff and the added parties present separate appeals from that judgment.

With regard to the plaintiff's appeal, the only point argued was that the lease to Mohammadu Mohideen was bad, inasmuch as Madana Kanni had not executed it in the manner prescribed by his power of attorney, but had signed it in his own name, and not in the name of Ismail Natchia. This contention appears to be good. The cases on the point were summed up in *Evarts v. Chellamma*¹ from which it would seem that there is no particular form of words required to be used in signing a document under a power of attorney, provided that the act was done in the name of the principal. In this case the act was not done in the name of the principal, and the signature stands alone, and is that of Madana Kanni. There is, however, no occasion to go into this point in detail, as Mr. Pereira, for the defendant, has argued that the defendant is entitled to retain possession for the remainder of the term of the lease by right of prescription. This contention appears to be good. The case of *Jayawardene v. Silva*² decided that it was possible to establish title to the servitude of emphyteusis. On the analogy of that case, the right to hold a land for a period of years would be an interest in immovable property for that term; and here the right was founded upon a written document which though not good as a lease from Ismail Natchia complies with the Ordinance relating to frauds. The defendant has had possession for over the prescriptive period, and has thereby acquired a right to remain in possession until the expiration of the term for which it was his intention to hold and exemplified by the lease. The defendant's leases were continuous, one from the other. So in this case there can be no argument that he has not had continuous possession for the prescriptive period. The appeal of the plaintiff, therefore, fails.

With regard to the appeal of the added parties, that must also fail on this finding; for they could not be in possession while the first defendant was in possession, and they cannot make the defendants' possession their own. I would accordingly dismiss both appeals, with costs.

SCHNEIDER J.—I agree.

Appeal dismissed.

¹ (1918) 21 N. L. R. 1.

² (1915) 18 N. L. R. 269.