

1938

Present : Poyser and de Kretser JJ.

MOHAMED ANVAR v. ARUMUGAM CHETTIAR.

132—D. C. Colombo, 889.

Curator—Lease of minor's property—Validity of a contract of monthly tenancy.

A curator may lease property belonging to a minor on a monthly tenancy without the sanction of court.

A PPEAL from a judgment of the District Court of Colombo.

H. V. Perera, K.C. (with him *S. J. V. Chelvanayagam*), for defendant, appellant.

N. E. Weerasooria, K.C. (with him *J. A. T. Perera*), for plaintiff, respondent.

Cur. adv. vult.

October 26, 1938. DE KRETSEK J.—

The plaintiff is a minor. His next friend is his father-in-law, who is also curator of his property. The previous curator was one Ismail and the property now in question consist of grass lands and some tenements,

which he had leased to the defendant-appellant on April 20, 1935, for two years commencing from March 1, 1936. The indenture of lease is D 8. The certificate of curatorship has not been produced but a summary of it is P 2 in the Police Court proceedings. It is in the form prescribed in the schedule to the Civil Procedure Code.

Purporting to act under this certificate the former curator had leased the appellant, also for two years, on D 6 of May 8, 1930, and on D 7, also for two years, on March 1, 1934. There is no document on record covering the period June 1, 1932, to February 28, 1934.

On September 1, 1936, the appellant was out of the Island and his business was in charge of an attorney.

On that day the present curator, Muktar, went along with the previous curator and entered into an agreement D 1 with the attorney for a monthly tenancy at the same rental as had been fixed by D 8. The agreement is not well worded but all the parties agree on its meaning. It is in the name of the appellant.

The certificate of curatorship in favour of Muktar is P 6 and is dated September 28, 1936.

The change was made, not because of any mismanagement on the part of Ismail, but because of the relationship created by the plaintiff's marriage.

When, therefore, D 1 was executed the certificate had not been issued but the change was already in effect.

On the appellant's return to the Island some conflict took place and as a result Muktar forcibly ejected the appellant on October 9, and was prosecuted. The Police Court case went on till July 1, 1937, on which day Muktar was convicted of criminal trespass and undertook to give, and did give, appellant possession of the premises leased. The appellant was then given notice to quit forthwith. This notice, D 5, was given on July 3 and it was given by the curator. It threatened action for the cancellation of the lease.

The plaint in this case was filed on July 8 by the minor and the one ground alleged was that "the said lease is void and of no effect in law inasmuch as it was granted by the said A. M. M. Ismail without the leave and sanction of Court". Damages in Rs. 450 a month were claimed from the date of the plaint.

A large number of issues were raised at the trial and decree was entered in plaintiff's favour on March 11, 1938, by which date the lease had expired.

Respondent's Counsel argues that a monthly tenancy would come within a curator's power of management but that a tenancy for a longer period would amount to alienation and would be null and void if it had not been sanctioned by Court. He relies on the case of *Mahwoof v. Marikkar*¹ and *Perera v. Perera*². These cases decided that a lease for a term exceeding one month was invalid unless sanctioned by Court. I do not understand these cases to decide that such a lease would be illegal or null and of no effect whatever but only that it would not be enforceable in the same way as a non-notarially executed lease for a similar period would not be enforceable. I do not see why such a lease should not

¹ 31 N. L. R. 65.

² 3 Broune 150.

operate as a monthly tenancy in the same way that this Court has recognized that non-notarial leases may operate. I do not wish to be understood to agree with the opinions expressed in *Mahawoof v. Marikkar (supra)* and *Perera v. Perera (supra)* and shall reserve my right to reconsider them should the necessity arise to do so. They are already affected by the opinions expressed in *Uduma Lebbe Udayar v. Christie*¹.

In the present case it is clearly established that the appellant went into possession as a tenant of the previous curator, Ismail, and that the present curator was willing to accept him as a tenant on the same terms, though not for a fixed period. What was the contract between Ismail and the appellant but one of tenancy on a monthly rental? Granting for the sake of argument that the agreement fixing the period was invalid, or even null and void, the tenancy still remained and the appellant was recognized by Ismail as his tenant and paid rent as a tenant. It is impossible to get away from that relationship. That relationship could be terminated only by such notice as the law recognized to be reasonable, and no such notice was given by Ismail's successor. Consequently plaintiff's action was misconceived and must fail.

But as the appellant was in possession as a monthly tenant and was liable to pay rent and as his Counsel expressed willingness to pay that rent I think a decree may be entered for the amount due, but without interest. Presumably the appellant would be liable for the period beginning on July 1, 1937, and ending February 28, 1938, i.e., a period of eight months, which means a liability to pay Rs. 2,000. The whole or greater part of this amount is already in deposit.

The appellant contributed largely to the lengthy and unsatisfactory course the trial took and the fairest order to make would be to award no costs in the lower Court.

The decree is set aside and the District Judge will enter decree for plaintiff for the rent due without interest of costs.

The appeal succeeds and the appellant is entitled to the costs of this appeal.

POYSER S.P.J.—

I have had the advantage of reading the judgment of my brother de Kretzer. I agree that the appellant should only be required to pay rent at the rate of Rs. 250 a month and I also have considerable doubts as to the correctness of the opinions expressed in *Mahawoof v. Marikkar (supra)* and *Perera v. Perera (supra)*.

Appeal allowed.