

1946

Present : de Silva J.

KATHIRGAMAR, Appellant, and IYER, Respondent.

77—C. R. Point Pedro, 277.

Lease—Clause for cancellation in case of damage done to the property leased—Cutting tender leaves of palmyrah trees—Sufficiency as ground for cancellation.

A lease provided that in the event of any damage or mischief being done to the leased property the lessor would have the right to cancel the lease. The lessor claimed that by cutting tender palmyrah leaves once in every two months for two years the lessee had caused damage to the trees. He had, however, not made any complaint or taken any action prior to the institution of action.

Held, that the evidence was insufficient to show that there had been any damage which would entitle the lessor to set aside the lease.

A PPEAL from a judgment of the Commissioner of Rêquests, Point Pedro.

H. W. Thambiah, for the defendant, appellant.

P. Navaratnarajah, for the plaintiff, respondent.

June 11, 1946. DE SILVA J.—

This is an appeal by the defendant against the decree of the Court of Requests setting aside a lease for a term of nine years from September 1, 1939.

The lease provides that in the event of any damage or mischief being done to the property the lessor will have the right to cancel the lease and re-enter into possession. It also provides that the lessee shall keep the fences properly repaired during the term of the lease and if he does so the lessor will forego the rent for the last year.

The lease is in Tamil. The parties are not agreed upon with regard to the actual terms of the lease ; so that three translations have been put in, one by the plaintiff, one by the defendant and the other by the Interpreter Mudaliyar. All three translations agree that the failure to repair the fences did not entitle the lessor to forfeit of the lease.

The evidence of the plaintiff shows that the defendant did not fence the property after he took the lease and also that he cut tender palmyrah leaves once in every two months. The cutting of the tender palmyrah leaves is said to be prejudicial to the trees. This is the only act of damage relied upon by the plaintiff to have the lease forfeited.

The evidence is in my opinion totally insufficient to show that the damage caused is of such a nature as to entitle the plaintiff to set aside the lease. According to him the cutting of the palmyrah leaves has been going on for two years but he had at no time made a complaint about this to any officer or taken any action before this case was instituted.

I am of opinion that the evidence does not show that there has been any damage which would entitle the plaintiff to set aside the lease.

I accordingly allow the appeal and dismiss the plaintiff's action with costs. The appellant is entitled to the costs of appeal.

Appeal allowed.
