

1951

Present: Gratiaen J.

ABDUL RAHUMAN, Appellant, and MARIMUTTU,
Respondent

S. C. 212—C. R. Ratnapura, 3,173

Landlord and tenant—Consent decree—Extension of tenancy permitted on terms—Expiry of extended term—Right of landlord to writ of ejectment.

Where a landlord sues his tenant for ejectment and a consent decree is entered by which *inter alia* the defendant is permitted to remain as tenant for a further stated period, writ of ejectment cannot be issued in the same action at the end of the stated period unless the consent decree has expressly provided that writ of ejectment can issue as a matter of course after the expiry of such period.

¹ (1921) 23 N. L. R. 483.

² (1950) 52 N. L. R. 332 ; 43 C. L. W. 111

³ (1921) 23 N. L. R. 266.

APPPEAL from an order of the Court of Requests, Ratnapura.

H. W. Jayewardene, with *J. Fernandopulle* and *M. S. Abdulla*, for the defendant appellants.

N. Kumarasingham, with *S. Sharvananda* and *E. R. S. R. Coomaraswamy*, for the substituted plaintiff respondent.

Cur. adv. vult.

March 21, 1951. GRATHAEN J.—

The original plaintiff in this action sued the defendant on 1st March, 1948, on a contract of tenancy. He pleaded that he had given the defendant notice to quit the premises and asked for a decree of ejection together with damages at the rate of Rs. 55 per mensem until he was restored to possession. It appears that the provisions of the Rent Restriction Ordinance were applicable to the premises and the authorised rent was only Rs. 55 per mensem. On 30th August, 1948, the action was settled, and of consent a decree was entered by which *inter alia* the defendant was to be permitted to remain *as tenant* for a further period of 1½ years at an agreed monthly rental of Rs. 75 payable each month in advance.

The consent decree provides that if at any time the defendant defaulted in the due payment of his monthly rent, a writ of ejection was to issue forthwith against him. The consent decree was, however, silent as to what should happen after the expiry of the period of 1½ years fixed by agreement between the parties.

It is common ground that the defendant remained in occupation until 28th February, 1950, without having defaulted in the payment of rent. In the meantime the plaintiff died, and the administratrix of his estate now claims (a) to be substituted as plaintiff in the action, (b) for a writ of ejection in the same action and to be restored to possession of the premises as the period of the agreed tenancy had expired. Both applications were allowed by the learned Commissioner.

In my opinion that part of the learned Commissioner's order whereby he allowed the application for ejection cannot be supported. Upon a proper construction of the consent decree, the true position is that in terms of the compromise a new contract of tenancy for a fixed term was entered into by the parties. As the consent decree did not provide for what was to happen at the expiry of the tenancy it seems to me that the only remedy available to the original plaintiff, and, upon his death, to his successors in law, was to enforce these contractual rights in a regular action. It is not permissible to imply any terms by which the parties could be presumed to have agreed that writ of ejection could issue as a matter of course after the expiry of the tenancy. Existence of such an implied term must be ruled out because there is an express agreement providing for a writ of ejection to issue in certain other eventualities which are not relevant to the present dispute.

I set aside the order appealed from with costs in both Courts. The substituted plaintiff's remedy, if any, is by way of a regular action.

Appeal allowed.