

Present : De Sampayo and Schneider JJ.

1921.

MEYDEEN *v.* GHOUSE *et al.*

430—D. C. Colombo, 1,572.

Minor—Sanction given by Court to lease property to one person—Lease by curator to another person—

Where a Court gives leave to a curator to lease property to one person for a certain rent, he cannot lease it to another person. The curator or any person in that position must strictly observe the sanction given by the Court to deal with the minor's property.

THE facts appear from the judgment.

Elliott, K.C. (with him *Bartholomeusz* and *R. C. Fonseka*), for plaintiff, appellant.

Samarawickreme, for defendant, respondent.

September 14, 1921. DE SAMPAYO J.—

The first defendant, who was a minor up to a recent date, is entitled to certain household property. Mohamado Fuath was a curator of the minor's estate, duly appointed by Court. In February, 1920, the curator applied to the Court to lease the minor's property to one P. C. N. Usoof for certain rent. The Court gave the permission asked for, but it appears that the curator, instead of leasing to the person mentioned in the application to the Court, leased the property to the plaintiff in this action. The first defendant, after he became of age, repudiated the curator's lease and granted another lease to the second defendant, who duly entered into possession. The plaintiff then brought this action alleging that the first defendant fraudulently and collusively disregarded the order of the Court, authorizing the grant of the lease to himself, and became party to the lease in favour of the second defendant. The plaintiff then

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prayed for possession of the premises and to be declared entitled to continue in possession during the whole period of the lease, or, in the alternative, that the defendants be ordered to pay to him the sum of Rs. 5,000 as damages. Several issues were framed at the trial. The first of them was : "Did Mohamado Fuath in his capacity of curator, with the authority of the Court by Indenture of Lease No. 92 dated March 16, 1920, lease the premises in question to plaintiff." The parties agreed to this issue, and asked the Court for an adjudication on that issue before the other issues were considered. The learned District Judge then gave his reason for holding that the curator had no authority of the Court to lease to the plaintiff, and that the authority of the Court was to lease to P. C. N. Usoof. The same question appears, to have arisen in the testamentary case No. 1,288, D. C. Colombo, and this Court, by its judgment of December 21, 1920, decided that the curator did not have the authority to grant the lease to the plaintiff. That decision covers the present case, and, if I may say so, there cannot be any other view taken in the matter. Mr. Elliott, for the plaintiff, however, points out that the lease, which the District Judge sanctioned, showed that the lease was to be granted to P. C. N. Usoof and his assigns, and he contends that being so, the fact of the lease being granted to someone else makes no material difference, and should be recognized as valid. I cannot agree with this argument. When leave is granted to lease a property to one party, the curator cannot lease as he pleases, but, I think, the lessee may still look to the curator, who is answerable for loss or damage to the lessee. The curator or any person in that position must strictly observe the sanction given by the Court to deal with the minor's property. It appears that in the District Court application was made to the Court that the plaintiff may be allowed to go on with the action for the purpose of recovering the consideration of Rs. 2,000, which is said to have been paid on the execution of the lease by the plaintiff to the curator. The District Judge did not accede to that request, but he reserved to the plaintiff the right of bringing some other action, if so advised, for that purpose. I think the District Judge was right in refusing to allow the case to continue with regard to the alleged payment of Rs. 2,000, as this is not pleaded in the case. Moreover, I should say, although it is not necessary to decide it here, if an action is brought to recover the advanced amount, the curator should refund the money to the plaintiff. I think the plaintiff should be content with the leave to bring another action.

I would dismiss the appeal, with costs.

SCHNEIDER J.—I agree.

Appeal dismissed.