

1959 Present : Weerasooriya, J., and Sansoni, J.

PIYADASA, Appellant, and PANDITHARATNA
HAMINE, Respondent

S. C. 491—D. C. Matara, 722/M

Lease—Cancellation—Method.

Assuming that a lease of immovable property for a period exceeding one month can be cancelled or terminated by means of an informal endorsement on the deed of lease, it is essential that, in such a case, possession also of the leased property should be surrendered by the lessee to the lessor.

APPPEAL from a judgment of the District Court, Matara.

D. R. P. Goonetilleke, for defendant-appellant.

W. D. Gunasekera, for plaintiff-respondent.

Cur. adv. vult.

November 20, 1959. WEERASOORIYA, J.—

The plaintiff-respondent filed this action against the defendant-appellant for the recovery of a sum of Rs. 400 being the balance said to be due on a promise in writing dated the 6th October, 1953, granted by the defendant and marked "A" and annexed to the plaint.

The document "A" is in Sinhalese. According to a translation filed of record (the correctness of which has not been questioned) the material part of the document reads as follows :

"I Wickremasinghe Ambepitiya Piyadasa of Gabadaweediya, Matara, do hereby disclose : That in respect of the premises dealt with by the deed of renunciation of rights No. 16487 attested by A. D. S. W. Samaranyake this day, that immediately after the Deed of Lease No. 12945 of the 9th July, 1952, executed by Grace Philip Panditharatna Hamine of Kamburupitiya for a period of five years commencing from 1st July, 1952, is cancelled by a deed executed in

accordance with law in as far as it concerns the remaining period of the said lease, I do hereby promise to pay unto Grace Philip Panditharatna aforesaid the sum of rupees six hundred (Rs. 600) lawful money of Ceylon."

Grace Philip Panditharatna referred to in the document is the plaintiff. In her plaint which is dated the 11th May, 1956, there is no averment that deed of lease No. 12945 had been cancelled. It merely sets out that subsequent to the execution of the document "A" the defendant had paid a sum of Rs. 200 on account and the balance sum of Rs. 400 was "justly and truly due and owing" from him to the plaintiff which sum he had failed to pay "though thereto often demanded".

At the trial, after the issues had been settled, Counsel for the plaintiff produced what he described as "the cancellation" of deed of lease No. 12945 marked P 1. By that deed of lease, which was executed on the 9th July, 1952, the plaintiff leased to one Gunadasa for a period of five years commencing from the 1st July, 1952, at a rental of Rs. 40 per annum, the land described in the schedule thereto. The "cancellation" consists of an endorsement on the deed which reads: "We the lessor and lessee by usual agreement do hereby cancel this lease on this 13th day of June, 1955". It is signed by the lessor and lessee and two witnesses. This endorsement has been registered on the 14th June, 1955, as a cancellation of the lease.

The defendant, who was the only witness called at the trial, stated that he purchased from the plaintiff for Rs. 1,250 the land which was then subject to the lease and that he gave the document "A" on the strength of the plaintiff's undertaking to get the lease cancelled in the manner stipulated in the document, that at no time had he been informed by the plaintiff that the lease had been cancelled and he subsequently sold the land to a third party for Rs. 4000. He denied that he had got possession of the land at any time and stated that the lessee continued to be in possession.

The learned trial Judge gave judgment for the plaintiff and the defendant has filed this appeal against it. Mr. Gunasekera for the plaintiff submitted at the hearing before us that the endorsement on the deed of lease No. 12945 amounts to a legal cancellation of the lease. He relied on the judgment of Jayewardene, J., in *Gopallawa v. Fernando and Another*¹. The question that arose in that case was whether a notarial lease of land for a period of five years could be regarded as having been legally terminated on the lessee making an endorsement on the deed of lease that it was cancelled and also surrendering possession to the lessor. Jayewardene, J., held that it was not necessary to have a notarial document cancelling the deed and that as between the lessor and the lessee the lease must be regarded as terminated. He referred to the case of *Isohami v. Appukamy*² where Shaw, J., held that an informal agreement (which was not even reduced to writing) was sufficient to terminate a lease of land for a period of six years as the agreement had been acted upon by the lessee surrendering, and the lessor taking over, possession.

¹ (1926) 26 C. L. W. 93.

² (1920) 7 C. W. R. 290.

But I do not see how these two decisions can avail the plaintiff. Even granting that a lease of land for a period exceeding one month can be terminated by a mere informal agreement, I think it is essential that possession also should be surrendered by the lessee to the lessor. In the present case, notwithstanding the purported cancellation of the lease on the 13th June, 1955, it appears from the uncontradicted evidence of the defendant that the lessee continued to be in possession of the land even on the date when this action was filed and also thereafter. The plaintiff has, therefore, failed to establish a valid cancellation of the lease. There is yet another reason why she cannot succeed. The agreement "A" specially stipulates for a cancellation of the lease "by a deed executed in accordance with law", which expression, in my opinion, signifies a formal document, such as a notarially attested instrument, and not a mere endorsement. The stipulation may well have been inserted for the avoidance of the very questions of law which were agitated in this case as a result of the purported cancellation of the lease by the informal method of an endorsement.

For these reasons the judgment and decree appealed from must be set aside and the plaintiff's action dismissed with costs here and in the District Court.

SANSONI, J.—I agree.

Appeal allowed.

