

opinion that when the petitioner was disbarred in 1937, it was the duty of the Registrar of this Court to have forthwith reported that fact to the Inn to which the petitioner belonged. We direct that this action should now be taken.

The application is dismissed with costs fixed at Rs. 105.

NAGALINGAM J.—I agree.

WINDHAM J.—I agree.

Application dismissed.

1949

Present: **Basnayake J.**

KATHIRGAMU *et al.*, Appellants, and NADARAJAH *et al.*,
Respondents

S. C. 111—C. R. Point Pedro, 1,382

Action for use and occupation—Principles underlying such action.

To found an action for use and occupation the relation of landlord and tenant must be established. Nor can such action be maintained against a person who claims to occupy the land as of right.

APPPEAL from a judgment of the Court of Requests, Point Pedro.

C. Thiagalilingam, for defendants appellants.

H. W. Tambiah, with *S. Sharvananda*, for plaintiffs respondents.

Cur. adv. vult.

June 8, 1949. BASNAYAKE J.—

This is an appeal on questions of law from the judgment of the Commissioner of Requests of Point Pedro. The defendants are the appellants and the plaintiffs are the respondents. The latter allege in their amended plaint that the former used and occupied 30 *paddies* of a land called Silaikaddaithoddam belonging to the plaintiffs from July, 1944, to the end of June, 1946, agreeing and undertaking to pay the plaintiffs' agent Thangammah, widow of Veluppillai, the sum of Rs. 300 as compensation for such use and occupation. They seek to recover the sum of Rs. 300 which they allege the defendants have failed to pay. The defendants deny the allegations of the plaintiffs and ask that the action be dismissed.

The following issues were framed at the trial—

"1. Did the defendants use and occupy 30 *paddies* of the land called Silaikaddaithoddam belonging to the plaintiff from July, 1944, to 30. 6. 46 ?

2. If so, what is the reasonable compensation ?

3. Does the amended plaint disclose a cause (*sic*) against the defendant ?
4. Can the agreement referred to in the plaint be enforced in view of section 2 of the Prevention of Frauds Ordinance ?
5. Is the action correctly instituted ?
6. Did the 2nd defendant use and occupy this land ?”

The learned Commissioner of Requests, who has answered, in favour of the plaintiffs, all the issues except the fourth, which was not pressed by the defendant who suggested it, does not appear to have had before his mind the true principles applicable to an action for use and occupation. It is necessary, therefore, before I discuss the facts of the instant case, to refer to the principles underlying such an action.

The action for use and occupation is founded on some contract or promise, express or implied¹. The fact of occupation by one person of premises belonging to another, by permission express or implied, gives rise to a presumption that a reasonable compensation for their use has been agreed upon between the parties². It is essential that the defendant must have held or occupied the premises as tenant thereof to the plaintiff : or by his permission or sufferance. There need not be an actual demise to support this action. A mere agreement for a lease, coupled with proof of possession thereunder, is sufficient. The principle is, that if a person have the actual use or enjoyment of land by the permission or on sufferance of another, whether there be a demise or not, this form of action may be maintained to recover the agreed rent (if any) or a reasonable satisfaction for such use and occupation. This Court has held so far back as 1864³ that a landowner in this country can recover for use and occupation without a notarial instrument, if there has been actual use and occupation. The principle underlying the action appears to be the maxim “*Nemo alterius detrimento locupletari debet*”. All the evidence that is admissible to prove compensation is admissible in an action for use and occupation⁴.

To found the action for use and occupation the relation of landlord and tenant must be established. In the instant case there is no evidence of the existence of that relationship between the plaintiffs and the defendants, nor is there evidence which gives rise to a presumption of that relationship. One Thangammah, the mother of the second plaintiff, gave evidence in support of the case of the plaintiffs. Her evidence, which the learned Commissioner accepts, does not establish that the plaintiffs are entitled to maintain the action. The learned Commissioner says: “Thangamma stated that she rented the land to both the defendants and she sent the letter of demand to both of them. I accept her evidence as true, in preference to that of the 1st defendant.” The letter of demand D1 referred to by the learned Commissioner contained no reference to the fact that the plaintiffs are the landlord and that

¹ *Foa on Landlord & Tenant*, 7th Edn., p. 392.

² *Gibson v. Kirk*, (1841) 1 Q. B. 850.

³ *Perera v. Fernando*, *Ramanathan's Reports*, 1863-68, p. 83 at 86.

⁴ *Perera v. Fernando*, *Ramanathan's Reports*, 1863-68, p. 83 at 87.

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