

Present : Akbar J.

EDIRISINGHE v. DASSANAIKE.

66—C. R. Matale, 18,951.

Landlord and tenant—Several lessors—Notice to quit given by one—Action for ejectment.

Where there are several lessors to a lease, a notice to quit given by one is insufficient to terminate the tenancy.

A PPEAL from a judgment of the Commissioner of Requests, Matale.

R. C. Fonseka, for plaintiff, appellant.

N. E. Weerasooria, for defendant, respondent.

June 10, 1929. AKBAR J.—

The plaintiff sued the defendant for ejectment from a certain land and for damages, alleging that the defendant was a tenant of the appellant's mother and that he refused to quit after notice was given to him to quit and deliver over possession of the premises let. The facts are clearly proved and there seems to be no dispute about them, the appeal being on points of law. The defendant was at first in possession of the land on a notarial deed executed in 1920 for five years. Later, on October 14, 1926, he was given an informal lease by plaintiff's mother, which runs as follows :—

I, the undersigned Dona Catherina Dias Wanigasekera Hamine, presently of North Matale estate, and my children, viz., Dona Margaret Maud Edirisinghe and Don Edward Thomas Edirisinghe, hereby lease the 3 lands owned by us, viz., Madugahamulapillawa, Kosgollegederawatta, and Kosgollegederawatta, and the tiled house situated thereon, which said lands situated at Pallegama, to Don John Dassanaike Appuhamy of Pallegama at the rate of Rs. 35 per each year for a period of 5 years

This document is signed only by plaintiff's mother, Dona Catherina Dias Wanigasekera Hamine, but the words quoted by me stated that the lessors are the mother and her two children, namely, plaintiff and his sister. The plaintiff says in his evidence that he served a notice to quit on November 2, 1927, which is a Proctor's letter stating that the Proctor has been instructed by the plaintiff to give defendant notice to quit. It will be observed that the notice to quit does not mention the name of the plaintiff's sister.

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This notice was served after the death of plaintiff's mother. The defendant on November 14 asked for two months' time, but he refused to pay the damages which were also claimed by the Proctor on behalf of the plaintiff in the letter I have mentioned. As regards the claim for damages, appellant's Counsel admits that he has no right owing to the non-joinder of plaintiff's sister in the action, but he has pressed this appeal on the ground that he is entitled to claim ejectment. To my mind I cannot see how plaintiff can succeed in this case without joining his co-lessee, namely, his sister. Wille in his *Landlord and Tenant in South Africa*, page 321, states that "If there are more than one landlord, each may bring the action for his proportionate share of rights under the lease of these rights ; it is probably only the right to claim the rent which could be separated into proportionate shares." Berwick's *Voet* (XIX. 2, 21) is also to the same effect by inference. Appellant's Counsel contends that this case should be sent back under section 17 of the Civil Procedure Code to enable the plaintiff to join his sister as a co-plaintiff. I do not think this will cure the defect in the notice to which I have alluded above. The notice was only on behalf of the plaintiff, and not on behalf of his sister. It is unnecessary for me to consider the further point of law which arose in this action, namely, that as the notice was served on November 2, 1927, asking the defendant to quit on or before December 3, 1927, it was a defective notice.

Mr. Fonseka has quoted Mr. Justice Driberg's opinion in *Auneris v. Arnolis*.¹ The respondent's Counsel, however, based his case on the authority reported in *Bandara v. Appuhamy*.² In view of the opinion that I have formed, that the notice to quit is defective by reason of the non-joinder of plaintiff's sister, it is unnecessary for me to decide which case is applicable. I must therefore dismiss the appeal with costs.

Appeal dismissed.

¹ C. E. Rec., vol. 10, p. 15.

² 25 N. L. R. 176.