

1948

*Present: Soertsz A.C.J. and Canekeratne J.*DHARMADASA, Appellant, and SACHCHOHAMY *et al.* Respondents.

33—D. C. Tangalla, 5,027.

Contract—New contract superseding a previous contract—Intention to supersede should be clearly manifested.

A lessee who obtained an option to acquire the portion of land leased by the lessor at the end of a term of years if he observed certain conditions agreed to sell a half share of the land conveyed to him to D. for a consideration. Five years later the lessee assigned a half share of the leasehold interest to D. for a sum of Rs. 150. Some years later D. paid the consideration due under the agreement.

Held, that there was no evidence to show that the assignment was accepted in satisfaction of the right to purchase a half share.

A PPEAL from a judgment of the District Judge of Tangalla.

H. V. Perera, K.C. (with him *Vernon Wijetunge*), for the plaintiff, appellant.

C. V. Ranawake (with him *H. A. Koattegode*), for the first defendant, respondent.

E. B. Wikramanayake, for the third and fourth defendants, respondents.

Cur. adv. vult.

November 23, 1945. CANEKERATNE J.—

Towards the end of 1931 the Crown was taking steps to lease land on certain terms to villagers in Maha Belane Village for conversion to paddy fields, &c., for periods of five years: an option to purchase the land at the end of a period of years was conferred on the lessee; such a lease is termed a "conversion lease". It appears that one P. Deonis made apparently about January 19, 1932, a successful application for a "conversion lease" for lot 4 BN; Deonis paid the rent for the first year, Rs. 20.95, about February 17, 1932, and then by deed P 1 (dated June 14, 1932) agreed to sell an undivided half-share of the lot to the plaintiff after he had obtained the Crown grant; the plaintiff agreed to pay half the rent and half the amount required to clear and asweddumize the land and Deonis agreed to deliver a half-share of the income to him.

By indenture 1D1 (dated October 4 and 12, 1932) the Crown leased the lot 4 BN to P. Deonis for a period of five years commencing from January 19, 1932, on an annual rental of Rs. 20.95; the lessee had the option of purchasing this lot at the end of five years or of the extended period if the land had been asweddumized and cultivated to the satisfaction of the Assistant Government Agent; the period of the lease was extended in 1936 or 1937 for a further five years.

About August, 1935, Deonis agreed to give a half-share of his leasehold interest to the plaintiff; he applied for and obtained on September 26, 1935, the lessor's consent for assigning a half-share of his interest; by indenture P 2 (dated February 17, 1936) Deonis assigned to the plaintiff

an undivided half-share towards the eastern side of lot 4 BN for a sum of Rs. 150. After this date the plaintiff was in possession of the eastern portion; Deonis of the western portion during his lifetime.

About November, 1941, Deonis died intestate and unmarried; the persons who became entitled to the property left by him were his two sisters, the first and second defendants, and the children of a deceased sister, third and fourth defendants. In 1945 a Crown Grant was issued in favour of the plaintiff, the first, second, third and fourth defendants: a half-share was conveyed to the plaintiff, and undivided $\frac{1}{6}$ share to each of the first and second defendants and an undivided $\frac{1}{12}$ share to each of the third and fourth defendants; the half-share, according to the plaintiff, was granted to him as he was in the position of a lessee and had observed the conditions of the lease.

In this action the plaintiff claimed that in terms of P 1 the defendants were bound to convey their undivided half-share to the plaintiff; separate answers containing substantially the same averments were filed by the first defendant, by the second defendant, and by the third and fourth defendants; the right or relief claimed by the plaintiff was denied by them.

The learned Judge took the view that the plaintiff was entitled to claim only half the land in terms of P 1 and that, as the Crown had conveyed a half-share, the intention of the parties had been given effect to.

The contention of the appellant is that the agreement P 1 and the transaction evidenced by the issue of the Crown Grant were entirely independent transactions. The learned Judge finds that the plaintiff complied with the conditions imposed on him by P 1. The plaintiff's evidence was that Deonis requested him in 1935 to take over all his interests in the land as he was not able to carry on the work, that he acceded to this request, paid him a sum of Rs. 150 as consideration and obtained P 2; that he paid the consideration is established by the evidence in the case. Deonis remained in possession of a half-share, *i.e.*, the half-share to the west in terms of P 1. After this date as Deonis failed to give him a half-share of the produce of the western portion, in terms of P 1 for the Maha season, 1938, and the succeeding seasons, the plaintiff instituted in March, 1941, an action for the recovery of a sum of Rs. 300, the estimated value of the produce: Deonis who filed answer denying the claim of the plaintiff died during the pendency of the action and the present defendants were substituted in his place; after trial, judgment was entered in plaintiff's favour for the sum of Rs. 150. The evidence proves conclusively that the plaintiff paid on or about December 23, 1941, the sum of Rs. 209.50 the consideration for deed P 14 to the Crown (P 9).

The intention of the obligor to give and of the obligee to accept the new thing in extinction of the old obligation is essential. (Voet: 46-2-3.)

Did the plaintiff agree about August or September, 1936, to accept an assignment of a part of the leasehold rights of Deonis in satisfaction of the pre-existing obligation? This is ordinarily a matter of intention, and should be evidenced by some agreement to that effect, or by some

unequivocal act evidencing such a purpose. A person should not easily be presumed to abandon the rights which belong to him: the intention of the obligee, in whatever manner expressed, should be so evident as not to admit of doubt. The evidence of the plaintiff makes it clear that he had no intention of abandoning his claims under P 1. It does not appear that Deonis at any time advanced such a claim. When he came to file answer in the money case in 1941 he only stated that the plaintiff fraudulently got him to sign the agreement P. 1, not that it had been extinguished. The person who gained an advantage by the assignment was Deonis: he received a sum of Rs. 150 for it from the plaintiff in February, 1936. The conduct of the parties after the execution of P 2 cannot be entirely ignored. The plaintiff paid the rent to Government for both portions for the years 1938, 1939, 1940 and 1941 (P 4—P 3) the rent for the years 1936 and 1937 was, according to the plaintiff, paid by him through Deonis. The full consideration for obtaining the Crown Grant was paid by the plaintiff alone.

These are circumstances which are inconsistent with the position taken up by the defendants; they afford intrinsic evidence in support of the plaintiff's assertion that the transaction evidenced by P 2 was entirely independent of the earlier agreement. The plaintiff is clearly entitled to the relief claimed by him. I therefore reverse the judgment of the learned Judge and order judgment to be entered in favour of the plaintiff as prayed for in paragraphs "a and c". The appellant is entitled to the costs of appeal.

SOERTSZ A.C.J.—I agree.

Appeal allowed.
