

Marhooma V. Weerasingham

304/1965

Present: H. N. G. Fernando, S. P. J., and Sirimane, J.

MRS. SITHY MARHOOMA, Appellant, and MRS. P. WEERASINGHAM, Respondent

S. C. 366/65—Application for conditional leave to appeal under Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance in C. R. Colombo, 85614

Privy Council—Conditional leave to appeal—Landlord and licensee—Action in ejectment—Valuation of subject-matter—Appeals (Privy Council) Ordinance, Schedule, Rule 2.

Where A continues to remain in possession of a house after he has sold it to B on condition that B should reconvey it to A if the consideration for the transfer is repaid within a fixed period, A's possession is that of a licensee. Accordingly, in an action in ejectment instituted by B, the subject-matter of the action must be valued, for the purpose of obtaining conditional leave to appeal to the Privy Council, at the value of the licence itself and not at the value of the property.

APPLICATION for conditional leave to appeal to the Privy Council.

K. Palakitnar, for the defendant-petitioner.

C. Ranganathan, Q. C., with *E. B. Vannitamby*, for the plaintiff-respondent.

November 12, 1965. **H. N. G. FERNANDO, S.P.J.—**

The plaintiff sued the defendant in the Court of Requests for ejectment on the basis that the defendant had been in possession of the house as the licensee of the plaintiff. This position apparently was not denied in the course of the action, but the defendant

pleaded that although he had sold the house to the plaintiff by a deed of 9th March 1962, the plaintiff was holding the property subject to a trust to reconvey to the defendant, if the consideration for the transfer was repaid on or before 31st December 1963. The learned Commissioner rejected the defendant's claim that the plaintiff held the property subject to a trust and entered decree for ejectment on the basis that the defendant was a licensee.

Even if the defendant's claim that the plaintiff held the property subject to a trust was a valid one, the defendant had no right to occupy the property except under the plaintiff. According to his own position the only right he had was to demand a reconveyance of the property upon fulfilment of the alleged condition for the reconveyance. It does not even appear that the defendant claimed to have satisfied this condition. Therefore even if the plaintiff is only a trustee, the defendant has no right to continue in possession of the property and the only matter in dispute was whether or not the defendant had been in possession as a licensee. Hence the subject matter of the action must be valued at the value of the licence itself and not at the value of the property.

The application for conditional leave is refused with costs.

SIRIMANE, J.—I agree.

Application refused.