

1948

Present : Basnayake J.FERNANDO, Appellant, *and* MARSHALL, Respondent.

S. C. 80—C. R. Colombo, 2,985.

Landlord and tenant—Payment of rent—Payee not person who put tenant into possession—Estoppel.

Where a person receiving payment of rent from a tenant is not the person who put him into possession but someone claiming title as his assignee or successor, the mere fact of payment of rent without more is not conclusive and does not estop the tenant from disputing the payee's title and explaining the payment.

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

E. B. Wikramanayake, with *G. Thomas*, for plaintiff, appellant.

P. Malalgoda, with *C. S. Randunu*, for defendant, respondent.

Cur. adv. vult.

March 17, 1948. BASNAYAKE J.—

The appellant, one H. P. Fernando, instituted this action against the respondent with a view to have him ejected from premises No. 72, Alston Place in Slave Island. The learned Commissioner of Requests dismissed the appellant's action and the present appeal is from that decision.

It appears from the evidence of the appellant that one Mrs. Wijesekere is the owner of premises No. 72 and twenty-eight other houses in Alston Place. Of these twenty-eight the appellant occupies one—No. 86, Alston Place—wherein he maintains a hotel. The respondent, who is also a proprietor of a hotel in some other part of Slave Island, uses premises No. 72 to house his bakery. The appellant wants the premises for the same purpose in order that he may make the bread required for his hotel.

One Ramasamy Chettiar had obtained the right to collect the rents of all Mrs. Wijesekere's houses in Alston Place. It was during the currency of Ramasamy Chettiar's contract that the respondent came into occupation of premises No. 72. The date, period, or the terms of the arrangement with Ramasamy Chettiar do not appear from the evidence. After some time one S. C. Fernando obtained the rights of Ramasamy Chettiar, but the nature of the arrangement does not appear in evidence. Later one W. D. Simon appears to have taken the place of S. C. Fernando. Here again the exact status of Simon in relation to Mrs. Wijesekere, the owner, is not known. But it appears that he

instituted C. R. Colombo Case No. 93,602 in 1944, to have the respondent ejected from premises No. 72. That action was dismissed on July 27 of that year and the respondent continued in occupation of the premises. In May 1946, the appellant obtained the rights of Simon the unsuccessful plaintiff in C. R. Colombo Case 93,602 which he describes as a sub-lease. On the strength of this he seeks to eject the respondent as he requires the premises for the purposes of his trade or business. He claims to come within the ambit of section 8 (c) of the Rent Restriction Ordinance, No. 60 of 1942.

If the appellant establishes that he is the landlord of the premises in respect of which he brings this action and if he satisfies the Court that they are reasonably required for the purpose of his trade or business he is entitled to succeed. The expression "landlord" as defined in the Ordinance means the person for the time being entitled to receive the rent of the premises in respect of which the action is brought. In this case the appellant's evidence of his right to receive the rent is vague and unsatisfactory. He has not produced any document whatsoever to support his claim that he holds a sub-lease from Simon and his oral evidence does not relieve the uncertainty as to his rights. In his examination-in-chief he gives no evidence as to his right to receive the rent. In re-examination he says "The owner of the premises is Mrs. Wijesekere. She originally leased out the premises to one Ramasamy Chettiar. Defendant came into occupation of the premises under Ramasamy Chettiar. After Ramasamy Chettiar, S. C. Fernando had taken it and sub-leased it to Simon and after Simon I had taken it as a sub-lease from Simon". In answer to a question by the Commissioner he says "I took the lease from S. C. Fernando of Norris Road".

The respondent alleges in his answer that the appellant is the "bill collector" of Simon who unsuccessfully attempted to eject him from the premises in 1944, and puts the appellant to the proof of his right. He avers "the defendant is unaware of the actual interest of the plaintiff in the said premises or that the plaintiff holds an advance of Rs. 105 in his hands of the defendant and puts the plaintiff to the proof thereof". The appellant had the opportunity of producing his instrument of lease and proving his claim. He has failed to do so and cannot therefore succeed.

The question whether the respondent is estopped from adopting the attitude he has taken up in his answer has not been raised in the lower court and need not therefore be discussed here. However, as there is evidence that the respondent paid rent to the appellant I wish to add that where, as in this case, the person receiving the payment is not the person who let the payer into possession, but someone who is claiming title as his assignee or successor, the mere fact of paying money as and for rent without more is not conclusive and does not estop the payer from afterwards disputing the payee's title and leading evidence to explain the payment or payments made by him.

The appeal is dismissed with costs.

Appeal dismissed.