

1947

Present : Howard C.J. and Soertsz S.P.J.

REZAN, Petitioner, and RATNAYAKE, Respondent.

*S. C. 341—In Revision C. R. Colombo, 98,589.*

*Revision—Amendment of decree—Events not contemplated by petitioner—Power of Commissioner to amend decree—Restitutio in integrum—Civil Procedure Code, sections 139 and 339.*

Petitioner sued the respondent for ejection from certain premises and damages at Rs. 20 per month till the date of ejection. Decree was entered in his favour with the proviso that if the respondent paid Rs. 20 on the 10th of each month he was to continue in occupation while the Rent Restriction Ordinance was in force. At the time of the decree the standard rent of the premises was Rs. 20 per month and the Rent Restriction Ordinance was to cease on December 31, 1946. Subsequent to the decree the operation of the Ordinance was extended till December 31, 1947, and the authorised rent to Rs. 23.50. The petitioner applied to the Commissioner of Requests for amendment of the decree but the Commissioner held that he had no power to amend it. The petitioner then moved the Supreme court in revision.

*Held*, that the petitioner was not entitled to relief by way either of revision or *restitutio in integrum*.

THIS was a case referred to two Judges by Dias J.

*M. I. M. Haniffa*, for the petitioner.

*E. B. Wikramanayake*, for the respondent.

*Cur. adv. vult.*

October 30, 1947. SOERTSZ S.P.J.—

This is an unfortunate case for the petitioner who asks us to exercise our powers of Revision in respect of an order made by the Commissioner of the Court of Requests, Colombo, on July 17, 1947, dismissing an application made to him by the petitioner for the amendment of a decree entered on September 24, 1946.

The petitioner had sued his tenant, the respondent to this application, to have him ejected from the premises he held on a monthly tenancy from the petitioner on the ground that the respondent was causing damage to these premises, and was conducting himself in relation thereto in a manner calculated to cause nuisance to the petitioner and to the occupiers of the adjoining premises.

The petitioner also claimed damages till possession of the premises was restored to him.

In his answer, the respondent denied these averments and prayed for the dismissal of the petitioner's action. After trial, the Commissioner entered the following decree: "It is ordered and decreed that the defendant be ejected from premises No. 433, Bambalapitiya South, in Colombo, bounded on the North by a part of premises No. 2 Kensington Gardens, South by premises No. 435, and West by Galle Road, and that the plaintiff be placed in quiet possession thereof. It is further ordered and decreed that the defendant do pay to the plaintiff damages at Rs. 20 per mensem from August 1, 1946, till the defendant is ejected from the premises.

“ And it is further ordered and decreed that if defendant pays the August and September damages before October 10, 1946, and thereafter each month's damages on the 10 of the following month as from November 10, 1946, plaintiff having one month's advance in his hands, defendant to continue in occupation of the premises while the Rent Restriction Ordinance is in force. In default both writs to issue.

“ And it is further ordered and decreed that costs be divided.”

At the time this decree was entered, the standard rent for these premises was Rs. 20 a month, and the Rent Restriction Ordinance as it stood was due to cease to operate after December 31, 1946, subject, of course, to any legislative action. But after decree had been entered, the operation of the Ordinance was extended and, at present, stands entered till December 31, 1947, and the authorised rent the petitioner would be entitled to is Rs. 23.50 a month.

The Commissioner, in the course of the order he made refusing the application for amendment, made the following observation: “ At the time I made order, I must confess, I did not take into consideration the amendments to the Rent Restriction Ordinance, permitting the landlord to collect rent an additional 10 per cent. of the authorised rent, and of the extension of the period of the Rent Restriction Ordinance. I am of opinion that when I ordered Rs. 20 per month as damages, I meant the authorised rent then prevailing at the time. It is only just that the plaintiff-landlords should be entitled to a 10 per cent. increase; but the question is, am I empowered to amend the decree made *inter partes*, however just or reasonable it may be? Section 189 provides for the amendment of the decree under certain circumstances. The present application does not come within any of these provisions. Although I feel that the plaintiff is entitled to an amendment of the decree, yet in my opinion, I have no power to do so. The Supreme Court alone has that power. The plaintiff's remedy is by way of *restitutio in integrum*.

“ I dismiss the application, but I make no order as to the costs of this inquiry.”

It seems clear that the Commissioner was right in this view that he had no powers to amend the decree. Section 189 of the Civil Procedure Code is exhaustive of the causes for which a decree may be amended, and this case does not fall within any of them. As things stood at the time when the decree was entered, it was an intelligible and fair order to make. Both parties appear to have been satisfied for neither party took any steps to appeal against it. Subsequently events, however, defeated the anticipations entertained by the Commissioner and by the parties, and I have not been able to discover a single case in which either here or, *in pari materia*, elsewhere a decree has ever been sought to be amended for such a reason. Counsel for the petitioner also invoked the assistance of section 839 of the Civil Procedure Code, but it is impossible to construe that section as giving us power to intervene in a case like this. We were, then, addressed to ask us to treat this application as one for *restitutio in integrum* on the ground that subsequent events had defeated what was the intention of the parties. But before going on to consider the grounds on which *restitutio in integrum* is given,

even if we assume that the intention of the Commissioner was as he has stated it to have been, and that the petitioner's hopes were as he declares them to have been we do not know and cannot say what the respondent understood the decree to mean. It is possible that he snatched a fearful joy from the decree as it was entered expecting or, at least, hoping that an extension of the operation by the Restriction Ordinance, will defer for him the evil day of ejection. Besides, the usual grounds on which *restitutio in integrum* is granted are fraud, mistake, and the discovery of fresh evidence, except in the case of minors.

In this case, clearly there was no fraud or discovery of evidence. Nor was there mistake in the sense in which that word is understood in such a context as this. What happened was that the parties, or some of them, took for granted that events would turn out as they expected. If such a ground was admitted for granting relief by way of *restitutio*, it should be open, for instance, for parties affected by the most authoritative judgments of this Court, to ask for relief on the ground that the Privy Council had, in some subsequent case, taken a different view.

The petition must be dismissed with costs.

HOWARD C.J.—I agree.

*Dismissed.*

---