Present: Bertram C.J. and Porter J. 1923.

PODISINGHO *et al v.* JAGUHAMY.

281—D. C. Kegalla, 6,149.

Emphyteusis—Person leasing in perpetuity more than his share—Possession by the lessee of the entire rights leased—Prescription—Lessor may claim benefit of possession by lessee.

Where a person who was entitled to a share of a land granted a perpetual lease of the same to another, and the lessee took the produce of the whole land and gave to the heirs of the lessor the landowner's share for over ten years.

Held, that the lessees had acquired a title by prescription to the lease of the whole land, and that the lessors had acquired title to the whole land.

A person claiming rights of emphyteusis may not only acquire these rights by prescription, but may enlarge those rights by prescription. Prescription can be established not only by direct possession, but also by possession through a lessee.

H. V. Perera (with him *Rajakariar*), for the appellant.

Keuneman, for the respondents.

November 21, 1923. BERTRAM C.J.—

This case is a somewhat obscure one, and we are indebted to Mr. Perera for very lucidly explaining to us both the facts and the implications of the learned Judge's judgment which we could not otherwise so readily have realized. On the facts as so explained the position seems to me clear. The plaintiffs and their predecessors hold under what has been described as a perpetual lease. The document referred to gave them the right of emphyteusis, and it is expressly admitted that for many years past they have acted as tenants of the whole land, and have received the produce of the whole land accounting for the landowners' shares. Now, Mr. Perera has demonstrated that the original lessors, under whom these rights are claimed, had not a title to the whole land which they purported to lease. Bandulahamy, one of the lessors, appears to have no right at all. Ranhamy, the other lessor, had only a right to one-third. Ranhamy and Bandulahamy, acting together, could lease no more than Ranhamy's one-third. That was the position in 1852, the date of this perpetual lease. But it is quite clear that a person claiming rights of emphyteusis may not only acquire these rights by prescription, but may enlarge those rights by prescription.

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That is settled by two cases (*Jayawardene v. Silva* [1] and *Arunasalam Chetty v. Bilinda* [2]). Although, therefore, the tenants under this deed of perpetual lease only started with the legal right to one-third by acting since that date as tenants of the whole land, they have enlarged their rights under that deed so far as to cover the whole land. It cannot be contested, therefore, that, so far as the cultivators' share goes, they possessed that with respect to the entire land, and Mr. Perera does not effectively contest that claim.

But the plaintiffs claim something more. They claim that they had also acquired half the landowners' share in the land, that is to say, one-fourth of the land. They derive that by a deed of 1919 from Christian Naida, a son of their original lessor Bandulahamy. Mr. Perera says that Christian Naida had no title to convey. But he had a title. He was the lessor of the plaintiffs and their predecessors. It is sworn in evidence that these persons gave him half the landowners' share of the land. Prescription can be established not only by direct possession, but also by possession through a lessee. It is hardly necessary to quote authority for that proposition. Bandulahamy, therefore, by the possession of his tenants, certainly could acquire a landowners' share which he did not originally possess. That share could pass to his son, and that share so passing to the son could be conveyed to the plaintiffs. That appears to be the view of the learned Judge, though it is not very fully expressed, and that view appears to me sound in law.

Mr. Perera emphasizes the fact that a part of the landowners' share has been paid to various persons under whom he claims. The answer to that is that these shares were paid to these persons on the undertaking that they were the heirs of Ranhamy, one of the original lessors. Whether they were the heirs or not, whether they derived their title by inheritance or under the deeds they set up, it does not affect the question. We are dealing with a question of prescription, and the circumstances I have mentioned does not affect the question of prescription. He also draws attention to the fact that certain mortgages were executed in favour of one of the plaintiffs of certain shares in the land. That, again, does not affect the matter, because the plaintiffs in question would naturally treat these mortgages as being mortgages of the landowners' share of the land which they admitted the mortgagors would be entitled to. In view of these considerations, I am not prepared to say that the learned Judge's solution of this problem was wrong, and would dismiss the appeal, with costs.

PORTER J.—I agree.

Appeal dismissed.

[1] *(1915) 18 N. L. R. 269.*

[2] *(1922) 24 N. L. R. 311.*