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Present : Fisher C.J. and Garvin J.

## MATHES v. RODRIGO.

426—D. C. Negombo, 1,705.

*Husband and wife—Joint lease by husband and wife—Payment of rent by lessee to husband, effect of —Is husband authorized agent of wife within the meaning of section 9 of Ordinance No. 15 of 1876 ?*

Where a woman married before the Married Women's Property Ordinance of 1923, leased property which belonged to her exclusively, and the husband joined the deed of lease to signify his assent to the lease, and where the lessee, who knew that the wife was solely entitled to the property, paid the rent to the husband and obtained a receipt from him,—

*Held*, that such payment was not a valid discharge of the obligation to pay rent.

*Rosairo v. Abraham*<sup>1</sup> followed.

The husband is not the "duly authorized agent" of the wife merely by reason of the fact he is husband or that he joined in the deed of lease.

**P**LAINTEIFF, who is the wife of the third defendant, sued the first and second defendants to recover Rs. 6,000, being a year's rent due on a lease dated February 9, 1926. The plaintiff and the third defendant were married shortly before the Married Women's Property Ordinance of 1923 came into operation. In the lease the plaintiff and the third defendant appear as lessors, while the property is declared to be the property of the plaintiff. After the plaint was filed, but before summons was taken out, the third defendant gave a receipt for the rent sued for, which the defendants pleaded in discharge of the obligation to pay the rent. The learned District Judge held that the receipt given by the husband as co-lessee was a valid discharge and dismissed the plaintiff's action.

*Croos-Dabrera*, for plaintiff, appellant.

*Rajapakse*, for first defendant, respondent.

*A. L. Jayasuriya*, for third defendant, respondent.

May 5, 1928. FISHER C.J.—

In this case the plaintiff, who is the wife of the third defendant, sued the first and second defendants as lessees to recover Rs. 6,000, being a year's rent due on a lease dated February 9, 1926.

<sup>1</sup> (1914) 17 N. L. R. 357.

The third defendant was joined as defendant because, according to paragraph 7 of the plaint, he refused to give his consent to the plaintiff to institute the action. The plaintiff and the third defendant were married shortly before the Married Women's Property Ordinance, No. 18 of 1923, came into force, and it is not contested that by reason of section 9 of the Matrimonial Rights Ordinance, No. 15 of 1876, the written consent of the husband was essential for the validity of the lease.

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In the lease the plaintiff and the third defendant figure as "the lessors"; the property is declared to be the plaintiff's property, the rent for the first six months is stated to have been already paid in advance, and the lessees agree to pay the rent for the remaining six months of the first year at the expiration of the first six months, and the rent for the remaining four years quarterly, and "to obtain receipts from the lessors."

In the attestation clause of the lease it is stated that the obligation to pay the rent for the first six months (Rs. 3,000) in advance has been met by the second defendant giving to the plaintiff a promissory note for that amount. The rent for the next six months was also paid to the plaintiff, that is to say, all the rent payable under the lease, which became due prior to the rent sued for was paid, or accounted for, to her, and the learned Judge who tried the case has so found.

After the plaint was filed, but before summons was taken out, the third defendant gave what purports to be a receipt for the rent sued for (document D 2) and the action went to trial on two issues.

- (1) Was the sum of Rs. 6,000 sued for due at the time of filing this action ?
- (2) Is payment to one of the lessors a due discharge of the obligation to pay the lease money ?

The following passages of his judgment embodies the learned Judge's decision :—"The money due on the lease is movable property and is not comprehended in sections 10 and 11 of Ordinance No. 15 of 1876. Third defendant is therefore competent to dispose of it as he has done in granting receipt D 2. I find that in law the receipt D 2 given by a co-lessee is a good and valid discharge of the sum due on P 1 as rent for the second year. It is dated June 2, 1927, *i.e.*, six days after the institution of this action but five days before the summons were taken out by plaintiff. On the second issue I hold in favour of the defendants."

On the first issue, as it is framed, the answer should have been in the affirmative, but the question of whether the giving of the receipt, assuming it to be a good discharge, before summons, was

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in itself a complete answer to the claim is not one to which, in my opinion, it is necessary or possible, without knowing more about the facts, and neither the first nor second defendant gave evidence, to give an answer.

On the second issue the learned Judge has based his finding on the view that the rent was the absolute property of the third defendant. That view is, in my opinion, erroneous and is moreover in conflict with a decision of this Court in the case of *Rosairo v. Abraham*<sup>1</sup> decided in 1914, in which it was held that the rent of immovable property to which a married woman is entitled as her separate property is also her separate property. In that case Wood Renton A.C.J., after rejecting the view that section 19 of Ordinance No. 15 of 1876 deals with rent accruing from a married woman's immovable property, said (see page 360): "Section 9 clearly provides, by necessary implication, that not only the immovable property with which it deals but the rent of that property becomes the married woman's separate estate."

It was however urged that the receipt could be supported on the following grounds:—

First, that it was good inasmuch as it was given by one of the two lessors; and

Second, that the third defendant must be taken to be "a duly authorized agent" within the meaning of section 9 of Ordinance No. 15 of 1876, which provides that the receipts of a married woman "or the receipts of her duly authorized agent" shall be a good discharge for the rents of her immovable property.

As regards (1) it is admitted, and the statement in the lease is conclusive on the point, that the lessees knew that the plaintiff was solely entitled to the property and that the third defendant had no beneficial interest in it.

It was pleaded by the plaintiff that the third defendant only "signed the said deed of lease in his capacity as the husband of the plaintiff," to which the defendant in his answer replied that he "signed the deed as a co-lessor by reason of the interest he had in the properties."

In my opinion it is clear that the third defendant was made a party solely to evidence his consent to the lease in order to comply with section 9 of Ordinance No. 15 of 1876. He was, therefore, so far as the question arising in this case is concerned, a lessor only in the sense that no valid lease could be granted without his consent. That this was well understood and recognized by

<sup>1</sup> 17 N. L. R. 357.

the lessees, who, as has been noted, were well aware that he had no actual beneficial interest in the property, is evidenced by the terms of the attestation clause and the fact that they paid the second six months' rent to her and received a receipt signed by her for it.

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Furthermore, subsequent negotiations on behalf of the first and second defendants were carried on solely with the plaintiff. Whether the second and third defendants were entitled under the terms of the lease to a receipt signed by both husband and wife is another question, but it is clear that a receipt by a person who is solely entitled to the rent is a good discharge, while a receipt signed by a person who, to their knowledge, had no beneficial interest at all was in no degree a discharge of the defendant's obligation to pay rent.

D 2 is moreover in my opinion no evidence of payment as against the plaintiff in the absence of any reliable evidence of payment, *Rodrigo v. Andris*.<sup>1</sup>

As to (2), in my opinion the third defendant was not the duly authorized agent of the plaintiff. There are circumstances in which a husband may be regarded as the agent of his wife by implication. But he is not so merely by reason of the fact that he is the husband and the fact that the third defendant joined in the lease did not under the circumstances make him a "duly authorized agent" of the plaintiff to give receipts for money to which she is solely entitled.

Plaintiff is therefore clearly entitled to sue for so much of the rent as she is beneficially entitled to, that is, to the whole of it, and in my opinion the judgment of the District Court must be set aside, and judgment entered for the plaintiff for the amount claimed with costs of the appeal and in the District Court.

GARVIN J.—I agree.

*Appeal allowed.*

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<sup>1</sup> (1917) 20 N. J. R. 20.