1931 *Present:* **Akbar J. and Maartensz A.J.**

ISMAIL *v.* COLOMBO MUNICIPAL COUNCIL.

326—D. C. Colombo, 25,185.

Assessment—Annual value—Action to reduce assessment—House designed to meet requirements of Muslim community—Basis of assessment.

Where, in an action to reduce assessment it was proved that a house would be worth Rs. 400 per mensem, were it not that it was designed to suit the requirements of the Muslim community,—

***Held*, that no reduction could be claimed on that basis, as the plaintiff must be regarded as a possible tenant.**

APPEAL from a judgment of the District Judge of Colombo.

F. A. Hayley, K.C. (with him *Jayatilleke*), for plaintiff, appellant.

A. E. Keuneman, for defendant, respondent.

September 2, 1931. AKBAR J.—

The plaintiff-appellant instituted this action for the reduction of the assessment of his house called Mamujee Villa, under section 124 of Ordinance No. 6 of 1910, from Rs. 4,000 a year to Rs. 2,500 a year. At the trial, however, Counsel for the plaintiff stated that he relied on the evidence of Mr. Eastman and that he would accept Mr. Eastman's figure, namely, Rs. 3,250, as a fair annual value. The main question argued in this appeal was that the District Judge was wrong in declaring that the annual value was Rs. 4,000 as fixed by the District Judge and that it should be reduced to Rs. 3,250. It is clear from section 124 of Ordinance No. 6 of 1910, and, it was so admitted by Counsel for the appellant, that the burden of proof was on the plaintiff to show that the assessment was wrong. The case really hinges on the evidence of Mr. Eastman and accordingly to him this house has been so built as to be of use only to members of the Muslim community, especial members of the Boarh community, to which the appellant belongs. The words of Mr. Eastman are " A European tenant will not take this house . . . . The house is very airless and dark . . . . This is not the type of house which is occupied by Europeans . . . . The house has been designed to give extreme privacy for the purposes and desires of the Muslim community." But Mr. Eastman admitted that he considered " Mamujee Villa would be worth Rs. 400 a month were

it not for the fact that it was designed for Muslim occupation ". He, however, thought that as the use of such a house was restricted to members of the Muslim community or Borah community, the assessment should be reduced to Rs. 325 a month. He gives, however, no reason why the reduction should be from Rs. 400 to Rs. 325 per month. So that the nett result of his evidence in this case is that although the house suited the plaintiff in every way he would not have paid the full Rs. 400 a month, but would have only paid Rs. 325. The plaintiff himself has given no evidence to support this opinion evidence of Mr. Eastman.

It has been held by the English Courts, namely, in the case of *The Queen v. The School Board for London* [1], that a School Board School, which was owned and occupied by a School Board, was liable to be rated to the poor rate, though the School Board could make no profits out of the school and no tenant could be found for it as a school except the School Board themselves; and that the " gross value " of the school under the English Act was the annual rent which the School Board themselves might reasonably be expected to pay if they were tenants of it. In the case of *The London County Council v. Erith Overseers* [2], the House of Lords held that the London County Council who were the statutory owners of land and premises, of a pumping station and works were assessable to the poor rate on the basis of such rent, as they would have been willing to pay if the premises had belonged to a private owner, although the premises were incapable of yielding a profit and the County Council were practically the only possible tenants. Applying these principles to this case the point for decision in this appeal narrows itself to a small compass. Had this house not been designed for Muslim use, it would be fairly worth Rs. 400 a month, but says Mr. Eastman, although any Muslim tenant would have paid Rs. 400 for a month for this house, yet the rental should be reduced to Rs. 325 a month, because most of the Muslim owners were not in the habit of renting out houses and invariably owned their own houses. As I have pointed out there is no evidence on the point why the reduction should be at the rate of Rs. 75 a month and not something less or more. The burden on the issues was on the plaintiff. He has himself not given evidence to prove that if this house was available to him he would not have paid Rs. 400 but only Rs. 325 a month. According to the decisions quoted by me above, the plaintiff himself must be regarded as a possible tenant. It seems to me, therefore, that the plaintiff has failed to discharge the burden which was on him and that his appeal must be dismissed. Mr. Hayley also argued further that the costs should be divided, because there were certain other issues framed with regard to the rates payable for the first quarter, which the District Judge has decided in plaintiff's favour. As the District Judge points out, however, the plaintiff is not entitled to relief as regards costs, because he had failed on the main question in this action. The appeal must be dismissed with costs.

MAARTENSZ A.J.—I agree.

Appeal dismissed.

[1] *(1886) L. J. A. B., Vol. 55, p. 169.* [2] *(1895) L. J. A. B., Vol. 63, p. 9.*