

1946

*Present: de Silva J.*ELIYATHAMBY *et al.*, Appellants, and KANDIAH, Respondent.296—*C. R. Jaffna, 247.*

Action for use and occupation—Informal agreement relating to land—Possession under, by one party—Rights of the other party, though he is not true owner—Prevention of Frauds Ordinance (Chapter 57), s. 2.

Where a person has entered into possession of a land under an informal agreement and has received the benefit of such possession for a definite period he is bound to pay a reasonable amount for such use and occupation to the person who placed him in possession though the latter may not be the true owner of the property.

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

H. W. Thambiah, for the first defendant, appellant.

C. Renganathan, for the plaintiff, respondent.

Cur. adv. vult.

March 8, 1946. DE SILVA J.—

The first defendant, against whom judgment has been entered for a sum of Rs. 280 for the use and occupation of a field at Murasamoddai, appeals from this judgment on questions of law. He has also made an application for leave to appeal on the facts.

The plaintiff, who claimed to be the owner of an extent of 21 acres of land called Murasamoddai field, alleged that on or about December 13, 1941, he entered into an informal agreement with the first and second defendants (P 1) by which they agreed to cultivate the field and give him 80 bushels of paddy out of the Sirupogam and 50 bushels of paddy out of the Kalapogam cultivations and a cartload of straw, and that the first and second defendants entered into possession and cultivated the land for the Sirupogam cultivation of 1942, but failed to give the 80 bushels of paddy, which are reasonably worth Rs. 280. The plaintiff also claimed Rs. 14·70 in respect of certain gunny bags and Rs. 32 for a cartload of straw, amounting in all to Rs. 326·70. He restricted his claim to Rs. 300 for the purpose of bringing the action in the Court of Requests.

Summons could not be served on the second defendant and the plaintiff waived his claim against him. The first defendant, who was served with summons, filed answer denying that the plaintiff was the owner of the

¹ (1910) 12 N. L. R. 119.

land. He alleged that he and the other defendant entered into the agreement D 1, which was for a term of 5 years and contained certain terms which were not in P 1, and that they cultivated 8 acres of the field but that owing to the default of the plaintiff in not keeping the fences in good repair cattle damaged the crops and he realised only 29 bushels of paddy. He further stated that they spent Rs. 250 in improving the land, the benefit of which they could not obtain as they were prevented from cultivating for the Kalapogam by Mr. Cumarasooriar, the owner of the land. He accordingly claimed Rs. 125 as the share of compensation due to him. He also pleaded that as a matter of law the agreement was unenforceable.

The parties went to trial on the following issues :—

- (1) Did defendant cultivate plaintiff's land at Murasamoddai, Paranthan ?
- (2) Did defendant agree to deliver 80 bushels of paddy to plaintiff ?
- (3) Did defendant use and occupy plaintiff's land ?
- (4) What amount is due to plaintiff for such use and occupation ?
- (5) Is the agreement referred to in the plaint enforceable in law ?
- (6) Did plaintiff agree to have the fences of the land referred to in paragraph 2 of the plaint to be kept in good order ?
- (7) Were the crops damaged by reason of plaintiff's failure to keep the fences in good repair ?
- (8) Have the defendants improved the lands ?
- (9) If so what compensation are defendants entitled to ?
- (10) Is the plaintiff the owner of the land referred to in the plaint ?
- (11) If not is the action maintainable ?

After trial the learned Commissioner of Requests answered issues (1), (2) and (3) in the affirmative, and (5), (6), (8) and (10) in the negative. On issue (4) he fixed the amount due for use and occupation at Rs. 280. On issue (7) he found that the crops were damaged but not owing to any default on the part of the plaintiff. He did not answer issue (9) in view of his finding on issue (8). He also found that the land belonged to Mr. Cumarasooriar and not to the plaintiff.

In appeal it was urged that the action, which was based on an informal agreement, could not be maintained in view of the provisions of section 2 of Chapter 57. It was further urged that even if an action could be maintained for use and occupation, it was not available to the plaintiff as he was not the owner of the land. In support of these contentions the Counsel for the appellant cited the cases of *Perera v. Fernando*¹, *de Silva v. Thelenis and others*², *Charles v. Baba*³ and *Subramaniam v. Viswanathan*⁴. On the other hand the Counsel for the respondent relied on the cases of *Sinno Appu v. Appu Sinno*⁵, *Nanayakkara and others v. Andris and others*⁶ and *Kanagaratna v. Banda*⁷.

A consideration of these authorities shows (1) that an informal agreement with regard to land does not become enforceable in law in its entirety though it has been partly performed by one of the parties, (2)

¹ (1863) *Ramanathan Reports* 83.

² (1916) 3 *C. W. R.* 130.

³ (1920) 22 *N. L. R.* 189.

⁴ (1937) 8 *C. L. W.* 137.

⁵ (1925) 6 *C. L. Rec.* 171.

⁶ (1921) 23 *N. L. R.* 193.

⁷ (1923) 25 *N. L. R.* 129.

that where a person has entered into possession of a land under an informal agreement and has received the benefit of such possession for a definite period he is bound to pay a reasonable amount for such use and occupation as he may have had and that such amount can be recovered by action, and (3) that this action is available to the person who placed him in possession though he may not be the true owner of the property.

The only case which seems to be in conflict with the above conclusions is the case of *Charles v. Baba (supra)*. In that case the action is said to have been based on the use and occupation of a paddy field. Only one issue seems to have been framed, that is "Can plaintiff maintain this action?". Schneider J., who dealt with the case, stated that it was entirely within the *ratio decidendi* of the case of *de Silva v. Thelenis (supra)*. He appears to have taken the view that the agreement was attempted to be enforced on the basis that it fell within the provisions of section 1 of Ordinance No. 21 of 1887, which made provision for "ande" cultivation. This view is supported by the only issue which had been framed. If that was the case the judgment would be consistent with the other authorities.

Where a person enters into occupation of a land under an unenforceable agreement, to which he himself is a party, he is not entitled to enrich himself by enjoying the land at the expense of the other. In my opinion the appeal on the law fails. There is no reason why leave should be granted to appeal on the facts.

A certain amount of confusion has arisen in this case by the evidence of title of Mr. Cumarasooriar. He is no party to the action and whatever rights he may have as against the plaintiff or the defendants will not affect the rights of the plaintiff as against the defendant who entered into possession under the plaintiff.

No issue was framed with regard to the liability of the first defendant alone for the full sum due to the plaintiff and this point need not be discussed. The first defendant may have a right of contribution from the second defendant.

The appeal and the application are both dismissed with costs.

Appeal dismissed.
