

1955

Present : K. D. de Silva, J.

CHARLES PERERA, Appellant, and W. A. S. DE COSTA,
Respondent

S. C. 72—C. R. Colombo, 46,975

Landlord and tenant—Sale of rented premises—Right of purchaser to recover rent from tenant—Attornment.

A purchaser from a landlord of the property leased is entitled to recover the rent from the tenant if he takes over possession of the property along with the vendor's tenant on it.

Zackariya v. Benedict (1950) 53 N. I. R. 311, not followed.

APPPEAL from a judgment of the Court of Requests, Colombo.

H. W. Jayewardene, Q.C., with *D. R. P. Goonetilleke*, for the defendant-appellant.

C. Ranganathan, for the plaintiff-respondent.

Cur. adv. vult.

July 18, 1955. DE SILVA J.—

This is an appeal in an action for rent and ejection. The plaintiff instituted this action on July 29th, 1953, to eject the defendant from premises No. 23 1/1 situate at Kirillapone on the ground that he had failed and neglected to pay rent from May 18th, 1950. According to the plaintiff the premises in question belonged to one Piyadasa Perera and the defendant occupied the same on a monthly tenancy under the said Piyadasa Perera. On a writ issued against Piyadasa Perera the land on which the building stands together with everything standing thereon was sold by Fiscal on 20.5.'49 and purchased by the plaintiff. This sale was confirmed on 7.7.'49 and the plaintiff obtained Fiscal's conveyance P3 dated 18.5.'50. The plaintiff was placed in possession of the land on 4.10.'50. At that time the buildings standing on the land were in the

occupation of the tenants of Piyadasa Perera. On 15.6.'50. the plaintiff gave an informal lease of the land and the buildings to Ratnayake. But as the tenants failed to attorn to Ratnayake this lease fell through. Thereupon the plaintiff asked those tenants including the defendant to pay rent direct to him. The defendant failed to comply with that request. Admittedly the defendant did not attorn to the plaintiff although he was asked to do so. It is in evidence that the defendant was present at the Fiscal's sale at which the plaintiff became the purchaser of the land in question. The defendant filed answer stating that premises Nos. 23 1/1 to 1/5 belonged to one K. D. Mithrasena and that he was in occupation of premises No. 23 1/2 as Mithrasena's tenant. He prayed that the plaintiff's action be dismissed with costs. After trial the learned Commissioner of Requests held that the defendant was in occupation of premises No. 23 1/1 and not 23 1/2 as alleged by him. He further held that the defendant entered into possession of premises 23 1/1 as the tenant of Piyadasa Perera and that the plaintiff had terminated the tenancy by a notice to quit given on June 26th, 1952. Accordingly judgment was entered in favour of the plaintiff. This appeal is from that judgment.

The learned Commissioner's findings of fact were not canvassed at the hearing of this appeal. Mr. Jayawardene who appeared for the defendant argued that the plaintiff was not entitled to sue the defendant on the basis of a tenancy as admittedly the defendant had not attorned to the plaintiff. In *Silva v. Silva*,¹ Pereira J. and Sampayo A. J. held that the purchaser from the landlord of the leased premises was entitled to sue on the contract of lease entered into between the landlord and the tenant and cited with approval the following passage from Wille on "Landlord and Tenant in South Africa." (221)

"A purchaser from the landlord of the property leased steps into the shoes of the landlord, and receives all his rights and becomes subject to all his obligations so that he is bound to the tenant, and the tenant is bound to him, in the relation of landlord and tenant."

This principle was affirmed by Wood Renton C.J. and de Sampayo J. in the subsequent case *Wijesinghe v. Charles*.² In regard to these two cases Mr. Jayawardene submitted that the purchaser at a Fiscal's sale did not stand on the same footing as a purchaser from the landlord. I am unable to agree with that contention. There is authority for the proposition that the purchaser at a Fiscal's sale of the landlord's interest in the leased property stands in the shoes of the execution-debtor in regard to a contract of tenancy. It was so held in *Simon Morris v. Henry Mortimer*.³ In that case the plaintiff had purchased the landlord's interest, in the premises of which the defendant was a tenant at an execution-sale. It was held that the tenant was bound to pay rent to the plaintiff. Dias J. stated in that case:—

"He (tenant) seems to have been aware of the execution sale and the purchase by the plaintiff and he cannot now be allowed to set up a payment of the rent to the execution-debtor after the plaintiff had

¹ (1913) 16 N. L. R. 315.

² (1915) 18 N. L. R. 163.

³ (1879) 2 S. C. C. 96.

purchased the land. The defence set up is that the execution-debtor's interest in the land was merely a life interest. This may or may not be true, but whether the execution-debtor had an absolute or conditional right, that right is now in the plaintiff, and the defendant is bound to pay the rent to the plaintiff who now stands in the shoes of the execution-debtor."

Mr. Jayawardene relied on the case of *Zackariya v. Benedict*,¹ a case decided by a single judge. The facts in that case were as follows:—Benedict took on rent certain premises from one Ahamed who was the owner of the same. Ahamed later gifted these premises to Zackariya the plaintiff. When the plaintiff requested Benedict to pay rent to him the latter refused to do so and even questioned the validity of the deed of gift. Thereupon the plaintiff sued Benedict for rent and ejection. But his action was dismissed in the Court below. The plaintiff appealed, and the appeal too was dismissed. Swan J. who decided the appeal appears to have based his decision on certain observations made by de Sampayo J. in *Wijesinghe v. Charles*. Those observations were made by de Sampayo J. in regard to a purchaser who was not prepared to take over possession of the property along with the vendor's tenant. Such a purchaser the learned Judge stated,

"May either stand on the strength of the title and sue the third party in ejection, or he may at once bring the action *ex empto* against his vendor for failure to implement the sale by delivery of possession."

That this dictum applied only to a purchaser who was unwilling to take over possession of the property with a tenant on it, is clear, from an earlier statement made in the same judgment which reads:—

"There is no doubt that under the Roman Dutch Law a purchaser has the right to recover the rent accruing since the sale from a tenant who had been let in by the vendor."

There is no doubt that there is a conflict between *Silva v. Silva* and *Wijesinghe v. Charles* on the one hand and *Zackariya v. Benedict* on the other. If I may say so with respect, the two earlier cases should be followed as each one of them was decided by a Bench of two judges. The position is also made clear in the judgment of Gratiaen J. in *de Alois v. Perera*² where he stated:—

"It would therefore seem that a tenant who remains in occupation with the notice of the purchaser's election to recognize him as a tenant may legitimately be regarded as having attorned to the purchaser so as to establish privity of contract between them."

In the instant case the plaintiff expressed his willingness to recognize the defendant as his tenant.

For the reasons set out above the judgment of the learned Commissioner is affirmed and the appeal is dismissed with costs.

Appeal dismissed.

¹ (1950) 53 N. L. R. 311.

² (1951) 52 N. L. R. 433.