

1945

*Present: Rose J.*

MISS THOMAS v. BAWA.

*In Revision C. R. Kandy, 34,721.*

*Jurisdiction—Action for ejectment—Consent decree—No proof of matters within the propisos to section 8 of Rent Restriction Ordinance—Waiver..*

Where, in an action for ejectment, a Court has jurisdiction over the subject-matter but there has been non-compliance with the procedure prescribed as essential for the exercise of jurisdiction, the defect can be waived by consent of parties.

*Cur. adv. vult.*

**T**HIS was an application for revision.

*Ivor Misso* for defendant, petitioner.

*E. B. Wikremanayake* for plaintiff, respondent.

February 14, 1945. ROSE J.—

In this matter it appears that the respondent instituted proceedings for ejectment against the petitioner from certain premises. The petitioner did not appear and decree was entered in his absence, but subsequently,

as a result presumably of negotiations between the parties, both parties represented by Counsel appeared before the Court on July 27, 1944, and entered into what in effect was a consent judgment and the note of the Judge reads as follows:—" Mr. Gunawardene with Mr. Lee for plaintiff; Mr. Van Reyk for defendant, settled, of consent"—I suppose that means by consent—" decree to stand. Writ of ejection not to issue till December 1, 1944 ". The *decree* of course means the decree entered into on an earlier date.

The petitioner now alleged that notwithstanding her consent to this judgment the Court in fact had no jurisdiction to entertain the matter at all, having regard to section 8 of the Rent Restriction Ordinance, no consent having been obtained from the Assessment Board and no special plea having been made by the respondent to bring the matter within one of the four provisos to the section, and the petitioner relies upon the proposition of law which is, of course unimpeachable, that where a Court has no jurisdiction to entertain a matter then no acquiescence by the parties can confer jurisdiction upon that Court. It seems to me, however, that this particular matter is covered by an Indian case which has been cited to me by the respondent that of *Gurdeo Singh v. Chandrikah Singh*<sup>1</sup>, in which the judgment refers to a Privy Council case the report of which is unfortunately not available but which I presume to be correctly cited—the case of *Pisani v. Attorney-General of Gibraltar*<sup>2</sup>—where their Lordships of the Privy Council held that where there is jurisdiction over the subject matter, but non-compliance with the procedure prescribed as essential for the exercise of jurisdiction the defect can be waived.

In this case it seems to me to be clear, as the respondent has pointed out, that the Court has jurisdiction over the subject matter (which in fact was an action for ejection) and had the case been properly pleaded so as to bring it within one of the four provisos there could have been no question but that the Court could have proceeded to hear and adjudicate upon the matter. It is perhaps even doubtful whether there is not a sufficient plea to bring the matter within the first proviso (a) but even assuming for the sake of the respondent that there is no specific plea to bring it within (a) and no plea to bring it within (c) I am of opinion that that is not a matter which takes it outside the jurisdiction of the trial court, because had there been a contest and had the matter been raised it would have been open to the Court to grant leave to amend the plea.

For these reasons it seems to me that the petition fails and must be dismissed with costs.

*Application refused.*

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<sup>1</sup> 36 Cal. p. 193.

<sup>2</sup> L. R. 5 P. C. p. 515.