

Feb. 21, 1911

*Present* : Van Langenberg A.J.

MASSILAMANY v. SANTIAGO.

487—C. R. Colombo, 20,705.

*Registration—Priority—Lease by owner—Subsequent mortgage—Prior registration of mortgage—How lease is affected by the prior registration of the mortgage.*

C, who was the owner of a land, leased it to plaintiff, and subsequently mortgaged the same to a third party. The mortgage bond was registered on October 14, 1907, and the plaintiff's lease was registered on February 22, 1910. The mortgage bond was put in suit, and R purchased the land at a Fiscal's sale under the mortgage decree on April 11, 1910, and his Fiscal's conveyance was registered on August 25, 1910. Plaintiff was no party to the mortgage action. R obtained a writ of possession on September 21, 1910, when the defendant, who was in occupation of the land as a tenant of the plaintiff, agreed to accept R as his landlord.

In an action by the plaintiff against the defendant for rent,—

*Held*, the plaintiff was entitled to succeed.

“The only effect of registration was to give priority to the subsequent deed. The earlier deed is not affected in any way, save that it has to take second place . . . . The plaintiff's rights as lessee remained alive, and although it may be that those rights were subordinate to those of the mortgagee, the plaintiff was not bound by the mortgage decree, he being no party to the action . . . . Under the writ issued at the instance of R, the defendant could not be legally ejected, and his acquiescence in his ‘eviction’ could not affect the plaintiff's position.”

**T**HE facts are set out in the judgment of the learned Commissioner of Requests (M. S. Pinto, Esq.) :—

This is an action for rent. The defendant says that he was originally the plaintiff's tenant, but pleads that the plaintiff's title has expired. This is a good defence if it can be established.

The owner of this land was one Casie Chetty. He leased it to the plaintiff. He afterwards mortgaged it to a Chetty, who put the bond in suit and obtaining a decree for its sale, had it sold by the Fiscal. Ramanaden purchased it at the Fiscal's sale and obtained a Fiscal's conveyance, which was registered on August 25, 1910. The mortgage bond was not registered till October 14, 1907. The lease was not registered till February 22, 1910. The mortgage decree was never registered. Ramanaden obtained a writ of possession, and on September 21, 1910, got the defendant and the tenants in the connected cases to agree to pay rent for him. It is clear that Ramanaden claims under the Fiscal's conveyance, and as it was registered after the lease to the plaintiff, the latter document has priority.

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The learned counsel for the defendant relied on section 664 of the Civil Procedure Code, and argued that the plaintiff was bound by the mortgage decree. But this section does not apply, as the lease was prior and not subsequent to the mortgage bond; moreover, there is no proof that the mortgagee left an address with the registrar. The plaintiff is not bound by the mortgage decree; his title has not been defeated.

It was also urged that the defendant was evicted, and that therefore the tenancy under the plaintiff terminated. In fact he was not evicted; to avoid eviction he agreed to pay rent to the plaintiff. He had no right to enter into such an agreement; and even if he was actually evicted, he would not be absolved from liability to the plaintiff; the eviction would have been illegal, as the mortgage did not bind the defendant or the landlord. It is obvious that it is only when the tenant is evicted under a decree which binds his landlord that he is released from the tenancy. If illegally evicted, the defendant had his remedy at law. The tenant must be loyal to his landlord. The defendant had to pay rent for April and May to Ramanaden; but that fact does not absolve him from his obligation to pay rent to the plaintiff, who is entitled to it . . . .

The defendant appealed.

*Bawa*, for appellant.

*Sampayo*, K.C., for respondent.

*Cur. adv. vult.*

February 21, 1911. VAN LANGENBERG A.J.—

This is an action by the plaintiff to recover rent from the defendant in respect of certain houses for the months of April to September, 1910. The owner of the houses was one Casie Chetty, who leased them to the plaintiff for a term which, I understand, has not yet expired. He subsequently mortgaged them to a Chetty, who put the bond in suit on March 12, 1909, and obtained a decree on April 6, 1909. The plaintiff was no party to this suit. Writ issued in the mortgage action, and the mortgaged properties were seized and sold by the Fiscal and bought by one Ramanaden on April 11, 1910. Ramanaden subsequently obtained a Fiscal's conveyance. The

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plaintiff's lease was registered on February 22, 1910. The mortgage bond was registered on October 14, 1907. The decree in the mortgage action was never registered. The Fiscal's conveyance was registered on August 25, 1910. Ramanaden obtained a writ from the Court to be placed in possession. This writ was executed on September 21, 1910. The Fiscal's officer entrusted with the writ says that he threatened to turn the defendant out unless he agreed to pay rent to Ramanaden, and the defendant having agreed to accept Ramanaden as his landlord was allowed to remain in occupation. The defendant raises two points. While admitting that he entered under the plaintiff, he contends that the plaintiff's title was determined on April 11, 1910, the date of the Fiscal's sale.

Mr. Bawa's argument for him was that under section 17 of Ordinance No. 14 of 1891 every deed, unless registered, shall be deemed void as against all parties claiming an adverse interest thereto on valuable consideration by virtue of any subsequent deed which shall have been duly registered; that the Chetty's mortgage was adverse to the plaintiff's lease; and that the plaintiff's unregistered lease must be deemed void as against the mortgage from October 14, 1907, the date on which the mortgage bond was registered; that when the mortgage action was instituted, the plaintiff had no interest in the land as against the mortgagee; that, therefore, it was unnecessary to make him a party to the mortgage action; that the mortgage decree was, therefore, good as against the plaintiff; and that on April 11, 1910, when the Fiscal sold the property, all the plaintiff's rights under the lease were determined. I am unable to uphold this contention. Section 17 of Ordinance No. 14 of 1891 reproduces verbatim section 39 of Ordinance No. 8 of 1863, and, so far as I know, it has always been considered that the only effect of registration was to give priority to the subsequent deed. The earlier deed is not affected in anyway, save that it has to take second place. The section under consideration provides "that nothing herein contained shall be deemed to give any greater effect or different construction to any deed, judgment, order, or other instrument registered in pursuance hereof, save the priority hereby conferred on it." Mr. Bawa was not able to produce any authority in support of his position. I am of opinion that the plaintiff's rights as lessee remained alive, and that, although it may be that those rights were subordinate to those of the mortgagee, the plaintiff was not bound by the mortgage decree, he being no party to the action. It follows that under the writ issued at the instance of Ramanaden the defendant could not be legally ejected, and his acquiescence in his "eviction" could not affect the plaintiff's position.

I think the judgment of the learned Commissioner is right, and that the appeal should be dismissed with costs.

*Appeal dismissed.*