

1955

Present : Sansoni J.

S. SILVA, *et al.*, Appellants, and MUNIAMMA, Respondent

S. C. 138—C. R. Colombo, 45,592

Landlord and tenant—Donee or vendee of leased premises—His right to sue tenant for rent.

Where a landlord donates the rented premises reserving a life-interest in his favour, the donee is entitled to claim the rent from the tenant on the death of the donor; it is not open to the tenant to continue to remain in possession and refuse to pay rent to the new owner on the pretext that he never attorned to the new owner.

Zackariya v. Benedict (1950) 53 N. L. R. 311, considered.

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

Vernon Wijetunga, with H. D. Perera, for the plaintiffs appellants.

No appearance for the defendant respondent.

¹ (1952) 54 N. L. R. 449.

January 24, 1955. SANSONI J.—

The premises in dispute were rented by one Girigoris Perera to the defendant. Girigoris had become the owner of these premises under a final decree entered in a partition action in 1939. After that decree had been entered Girigoris gifted these premises in 1946 to the plaintiffs subject to a life interest in his favour. Girigoris died on 15th November, 1952, and, on the 29th November, 1952, the plaintiffs wrote to the defendant informing her of Girigoris' death and asking the defendant to pay the future rents to them because they are entitled to the premises under the deed of 1946. The defendant did not even acknowledge this letter but continued in occupation of the premises. She has now been sued for rent from December, 1952, until the end of April, 1953, amounting to Rs. 60. The defendant in her answer denied that she was at any time the tenant of the plaintiff. She also pleads that she has paid rent to one Marthelis Perera who is a brother of Girigoris.

The learned Commissioner found that the defendant was Girigoris' tenant. He has also found that rent was paid to Marthelis on 1st December, 1952, that is to say, after Girigoris had died and after the plaintiffs had informed the defendant of his death. He appears to be satisfied that Marthelis was setting up the defendant to contest the plaintiffs' rights. He has, however, held that because the defendant refused to comply with the plaintiffs' request to pay rent to them, the plaintiffs cannot bring an action to recover rent as the defendant has not attorned to the plaintiffs. He cites a judgment of this Court in *Zackariya v. Benedict*¹, but the point decided there was different. Mr. Justice Swan was dealing with the case where a tenant refused to pay rent to the vendee of the landlord and all he held was that the vendee could give the tenant notice to quit and sue the tenant for ejection, but there are numerous authorities in support of the proposition that when a landlord sells premises which have been rented the purchaser steps into the landlord's shoes and is entitled to claim the rent from the tenant. Of course it is not incumbent on the tenant to remain in possession if he does not wish to acknowledge the vendee as his landlord. He is quite entitled to give up the tenancy and quit the premises, but so long as he remains in possession he must pay the rent to his new landlord, that is the vendee². In this case, apart from the fact that the defendant did not refuse to accept the plaintiffs as her landlord, it was not open to her to remain in possession and refuse to pay the rent to the plaintiffs. Although the plaintiffs are the donees of Girigoris their position is in no way different from that of a vendee. The only point of distinction is that their right to claim possession did not accrue until Girigoris had died. Once he died they were in exactly the same position in which any vendee from Girigoris would have found himself. I therefore set aside the judgment under appeal and enter judgment for the plaintiffs in a sum of Rs. 60 with costs in this Court and in the lower Court.

Appeal allowed.

¹ (1950) 53 N. L. R. 311.

² (1913) 16 N. L. R. at 317; (1951) 52 N. L. R. at 445.