

1959 *Present* : Basnayake, C.J., Pulle, J., and H. N. G. Fernando, J.

IN RE P. K. ENSA

*Rule Nisi issued under section 47 of the Courts Ordinance (Chapter 6) on P. K. Ensa of Telunpitiya, 21st defendant in D. C. Avissawella Case No. 8708/P—re Contempt of Court*

*Contempt of Court—Undertaking given by a party—Subsequent infringement thereof—Culpability—Courts Ordinance, s. 47.*

It is a contempt of court to act in breach of an undertaking given to a court.

In a partition action the 21st defendant undertook, pending an inquiry into an application made by the plaintiffs for an Injunction, not to continue certain building operations. Despite this undertaking she re-commenced building operations.

*Held*, that the defendant was guilty of contempt of court.

**R**ULE nisi issued under section 47 of the Courts Ordinance.

*M. Tiruchelvam*, Deputy Solicitor-General, with *H. L. de Silva*, Crown Counsel, as Amicus Curiae (on notice).

*N. Abeysinghe*, for Respondent.

*Cur. adv. vult.*

July 31, 1959. BASNAYAKE, C.J.—

The respondent Palle Kandelage Ensa the 21st defendant in D. C. Avissawella Partition Case No. 8708, (hereinafter referred to as the respondent), was called upon to show cause why she should not be punished for contempt of Court in that she acted in breach of an undertaking given by her to the District Court of Avissawella.

Shortly the facts are as follows :—

The plaintiffs in their plaint filed on 18th July 1957 in addition to praying a partition of the land also prayed that the respondent be restrained by Injunction from building on the land. On 27th August 1957 she filed through her proctor Nissanka Perera objections to the application for the injunction. She stated therein that she was renovating a house on the land where she was permitted to reside about 20 years ago by her mother the 12th defendant and asked that the notice be dissolved. The matter was then fixed for inquiry for 5th September 1957. On that day the following minute was made by the District Judge—

“ Mr. Perera states that his client has been in possession of a house on this land with the permission of her mother Kalu the 12th defendant and that this house collapsed about a year ago and she is putting up a house on the same foundation at the instance of her mother. Both counsel move for a date as the Headman who is a very material witness is absent. Allowed.

The 21st defendant undertakes not to continue the building operations pending the result of this inquiry. L. T. I. of 21st defendant.”

The inquiry was then refixed for 25th September 1957. On that day too the respondent undertook not to continue the building operations pending the result of the trial. The undertaking is thus recorded by the District Judge—“ The 21st respondent undertakes not to continue the building operations pending the result of the trial without prejudice to any rights she may have to the house or to the premises.”

It would appear from the petition of the 6th plaintiff petitioner dated 17th October 1957 that despite this undertaking while the trial was still pending the respondent re-commenced building operations on 10th October. When this petition was filed notice was issued on the respondent for 4th November 1957. On that day she stated “ as there was no order restricting me from continuing the building operations in accordance with the law, it is true that I continued the building operations after the undertaking given by me. I am not leading any evidence.” Thereupon after hearing Counsel the learned District Judge made order referring the matter of the respondent's contempt to this court. She has appeared in response to a rule nisi. She sought to show cause and called witnesses and gave evidence on her own behalf. The evidence proved beyond doubt that the respondent acted in breach of the undertaking, and we

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accordingly convicted her and sentenced her to three months' rigorous imprisonment at the conclusion of the hearing and stated that we would deliver our reasons later, which we accordingly do now. It is a contempt of court to act in breach of an undertaking given to a court. The law is thus stated in Oswald on Contempt (3rd Edn) p. 108.—

“An undertaking entered into or given to the Court by a party or his counsel or solicitor is equivalent to and has the effect of an order of the Court, so far as any infringement thereof may be made the subject of an application to the Court to punish for its breach. The undertaking to be enforced need not necessarily be embodied in an order.”

PULLE, J.—I agree.

H. N. G. FERNANDO, J.—I agree.

*Rule made absolute.*

