1954 *Present:* **Gratiaen J. and Fernando A.J.**

D. P. PALISENA, Appellant, *and* K. K. D. PERERA, Respondent

S. C. 58—D. C. Ratnapura, 9,081

Land Development Ordinance *(Cap. 320)—Permit-holder—His right to maintain* actio rei vindicatio.

A permit-holder under the Land Development Ordinance enjoys a sufficient title to enable him to maintain a vindicatory action against a trespasser.

APPEAL from a judgment of the District Court, Ratnapura.

H. V. Perera, Q.C., with *E. A. D. Atukorale*, for the plaintiff appellant.

H. W. Jayewardene, with *G. P. J. Kurukulasuriya* and *P. Ranasinghe*, for the defendant respondent.

Cur. adv. vult.

July 16, 1954. GRATIAEN J.—

On 24th January 1947 the Government Agent of the Sabaragamuwa Province issued in favour of the plaintiff a permit under the provisions of the Land Development Ordinance (Cap. 320), in respect of certain allotments of Crown land. The plaintiff has sued the defendant, whom he alleges to be a trespasser on the land, for ejectment and for consequential relief. The defendant raised a number of defences to this claim, including a plea that in any event a " permit-holder " under the Ordinance was not entitled, as against a third party, to relief of the kind asked for.

The case went to trial on a number of issues but, after a considerable volume of evidence had been led, the learned District Judge decided the action against the plaintiff on the ground that the plaint did not, in his opinion, disclose a remedy against the defendant. The basis of the decision was that " a permit-holder is only a licensee who is entitled to possess the land with the leave and licence of the Crown and at the will and pleasure of the Crown ", and was therefore " not entitled to ask for a possessory decree or to ask that a (third party in possession) be ejected from the land ".

The learned judge has misunderstood the scope of the remedy asked for by the plaintiff and failed to appreciate the nature of a permit-holder's rights under the Land Development Ordinance. This was not *a possessory action* in which a person complaining of dispossession can in certain circumstances, without proof of his title, obtain a decree for the ejectment of a person who has dispossessed him otherwise than by due process of law. This is *a vindicatory action* in which a person claims to be entitled to exclusive enjoyment of the land in dispute, and asks that, on proof of that title, he be placed in possession against an alleged trespasser.

It is very clear from the language of the Ordinance and of the particular permit P1 issued to the plaintiff that a permit-holder who has complied with the conditions of his permit enjoys, during the period for which the permit is valid, a sufficient title which he can vindicate against a trespasser in civil proceedings. The fact that the alleged trespasser has prevented him from even entering upon the land does not afford a defence to the action ; it serves only to increase the necessity for early judicial intervention.

I would set aside the judgment under appeal. If the averments in the plaint be established, the plaintiff is entitled in law to a decree of the kind asked for. It is indeed regrettable that, at the conclusion of the trial, the learned judge did not record his findings upon all the issues. Had that been done, it might well have been possible for us to give a final decision in an action which was instituted nearly 5 years ago. As things now stand, the record must be returned to the lower Court with a direction that the case be tried *de novo* before another judge. The appellant is entitled to the costs of this appeal and of the abortive trial in the Court below.

FERNANDO A.J.—I agree.

Appeal allowed.