

1898.
March 23.

VYTHILINGAM v. MUTTIAH.

C. R., Gampola, 2,818.

Action for rent—Derivative title of plaintiff—Denial of plaintiff's right of possession as landlord—Occupation of defendant under a third party—Averments necessary in plaint.

In an action to recover house rent, where the landlord's right is a derivative one he should state in his plaint and prove how he derived it, and from whom.

THE plaintiff, alleging that he was the landlord of a tenement and that the defendant was his monthly tenant, claimed Rs. 80 as rent for four months at the rate of Rs. 20 a month. The defendant denied that the plaintiff was his landlord, and that he ever paid him rent. He also stated that for the last eleven years he was the tenant of one Muttappa Chetty, and had paid rent to him for the four months referred to. The evidence showed that the plaintiff was not the owner of the tenement but an assignee of a lessee, and that at the date of the assignment the tenement was lawfully occupied by the defendant and others on

contracts of lease between the defendant and another. The Commissioner held that the plaintiff was the landlord of the defendant, and entered judgment for the plaintiff as claimed.

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The defendant appealed.

Dornhorst, for appellant.

Sampayo, for respondent.

23rd March, 1898. LAWRIE, J.—

I am unable to understand what right the plaintiff has to sue for rent.

In his plaint he avers that he is the landlord of the premises, but it is plain that he is not the owner, and that he was not the lessor to the defendant, and as his title is a derivative one he ought to have shown how he derived it, and from whom. Woodfall (*chapter III., section 1, p. 550, of ed. of 1889*) and Bullen and Leake (*4th ed., p. 246*). If the plaintiff had in the plaint set forth the lease to Buksh and the assignment of that lease to him, it would then have been plain that he had no right to enter on the premises, because these (according to the plaintiff) were at that date lawfully occupied by the defendant and others under contracts of lease between the defendant and a third party.

The plaintiff had no right to step in until the owner and lessor had by notice to quit terminated the existing contract. The case is not affected by the Ceylon Evidence Ordinance, which estops tenants during the continuation of their tenancy from denying that the landlord had a title at the beginning of the tenancy.

Is the defendant by attornment estopped from denying the title of the person to whom the attornment was made? Woodfall says: "It is to be observed that in all such cases the onus of proof as to the title is shifted and thrown upon the person who attorned. He must (among other things) disprove the title of the person to whom such attornment was made, which is sometimes impracticable and very difficult."

But, is it impracticable or difficult here? From the plaintiff's own showing he has acquired no right of entry nor of possession. So, even if the plaintiff's statements be true, the defendants by their payments have not bound themselves to pay to him for ever.

On the question of fact I am unable to agree with the Commissioner. The evidence that the firm of Muttiah Chetti have for years been the rightful owners, and that the defendants have paid rent to them, seems to me very much stronger and more credible than the evidence for the plaintiff. I set aside and dismiss with costs.