

1938

Present : Moseley and Keuneman JJ.

THE PUBLIC TRUSTEE *v.* KARUNARATNE.

118—D. C. Kalutara, 19,324.

Administrator—Heir in exclusive possession of premises—Right of administrator to sue for rent—Distribution of the estate.

An administrator is entitled for purposes of administration to recover reasonable rent from an heir in respect of premises in possession of such heir, particularly where the income from the premises is necessary for the proper distribution of the estate.

A PPEAL from an order of the District Judge of Kalutara.

L. A. Rajapakse (with him G. P. J. Kurukulāsuriya), for defendant, appellant.

N. E. Weerasooria, K.C. (with him C. Seneviratne), for plaintiff, respondent.

Cur. adv. vult.

December 15, 1938. KEUNEMAN J.—

The plaintiff as administrator of the estate of Dr. D. T. A. Karunaratne sued in his plaint for declaration of title to a certain house and premises, and for ejectment of the defendant, and for the sum of Rs. 1,840 as damages. The defendant in his answer averred that as an intestate heir of Dr. Karunaratne he had lawful right and title to one-half of the premises, and denied that an action lay against him for declaration of title and ejectment. In the alternative he pleaded that he was liable only to the extent of one-half of the amount of rent due. At the trial plaintiff's Counsel restricted his claim and prayer to a half share of the premises, and the following issues were framed.

Issues by plaintiff—

- (1) Is the defendant in exclusive possession of premises No. 318, Panadure ?
- (2) Has the defendant at any time paid rent for the half share of these premises due to his sister ?
- (3) Is the income from these premises necessary for the proper distribution of the Intestate Estate of Dr. Karunaratne ?
- (4) What sum is due by defendant to the estate in respect of these premises ?

Issues by defendants—

- (5) Does the plaint disclose any cause of action ?
- (6) Is the plaintiff entitled to—
 - (a) Declaration of title in respect of these premises ?
 - (b) Ejectment ?
 - (c) Damages ?
- (7) Has the plaintiff suffered any damage by the defendant occupying half of the premises for his share ?
- (8) What is a reasonable rent for these premises ?
- (9) If any sum is found to be due, is the defendant entitled to a set-off against his share of the estate of his deceased brother ?

The evidence established that the defendant and Mrs. C. Wijeratne were the heirs of their brother Dr. Karunaratne, that the defendant exclusively occupied the premises in question from December, 1931, and deliberately refused to account for the income of these premises and of almost all other properties belonging to the estate of the deceased, that a letter of demand P 3 dated April 16, 1935, was sent to the defendant on behalf of the administrator demanding rent for the premises in question from August 16, 1931, but that this demand was ignored by the defendant. In the circumstances the learned District Judge entered judgment against defendant for the sum of Rs. 1,460 due from January 1, 1932, till January 31, 1938, with further rent or damage of Rs. 20 per month thereafter. This is calculated on half the rental value of the premises.

From this judgment the defendant appeals. I do not think it is possible to disturb the findings of fact of the learned District Judge, but Counsel for the appellant contends that the original basis of the action has been abandoned, and that there is no cause of action disclosed in the issues. In particular he contends that no action can be brought by an administrator against an heir to recover rent in respect of premises of which the heir has been in possession. Certainly no authority has been cited to us to show that such an action can or cannot be maintained. But when we examine the matter we find that the power of the personal representative extends over immovable property (*Vand.* 273), and that for the purposes of due administration he is entitled to sell a property even though it has already been transferred by the heir, vide *Silva v. Silva*¹. There seems little doubt that an administrator can bring an action to recover money or other movable property forming part of the estate in the hands of any person, and in fact under section 712 of the Civil Procedure Code he may proceed by way of citation. In *Fernando v. Rosa Maria*² it was held that "where heirs take possession of the estate of a deceased, as they are entitled to do under our law, they would hold the property in trust for the legal representative, as representing the creditors, to the extent necessary to satisfy the debts of the estate." This last authority should however be applied with caution, for the decision is based upon the terms of section 96 of the Trust Ordinance.

Quite apart from the Trust Ordinance however, I find it difficult to deny to the legal representative, the right for the purposes of administration of requiring the heir or heirs in possession to bring into the testamentary suit a reasonable rent for premises in the possession of such heir or heirs, and of bringing an action to enforce this. This would more particularly be the case where one heir is in possession of the whole or the greater part of the deceased's estate to the prejudice of the other heirs. In the absence of authority I find it difficult to hold that while an administrator can for purposes of administration sell the immovable property of the estate over the heads of the heirs, he cannot call upon the heirs to account for the income of premises of which they are in possession. This latter right would certainly conduce to the preservation of the property of the estate.

¹ 10 N. L. R. 234.

² 28 N. L. R. 234, at p. 258.

As regards the further point raised, it is no doubt true that there is no evidence in this case, that this income is needed for the payment of the debts of the estate. The learned District Judge has however held that the income from the premises is necessary for the proper distribution of the deceased's estate. I think this finding is correct, for the evidence shows that the testamentary case is at a stand-still owing to the failure of the defendant to account for the income.

The appeal is dismissed with costs.

MOSELEY J.—I agree.

Appeal dismissed.
