

1922.

Present: De Sampayo and Schneider JJ.

APPUHAMY *et al.* v. WILLIAM SINGHO *et al.*

140—(Inty.) Kegalla, 5,559.

Action by lessees for cancellation of lease—One plaintiff becoming lunatic, pending action, and disappearing—Right of other plaintiff to go on with the action.

Plaintiffs who were lessees instituted an action for the cancellation of a lease. Pending the action the first plaintiff became a lunatic and had disappeared, and it was not possible to take proceedings to have him adjudged a lunatic and properly represented in the action.

Held, that in the circumstances the second plaintiff could not go on with the action as far as his share was concerned.

"The only alternative that the second plaintiff has is to withdraw from the action and institute, if he is so advised, a separate action on his own account."

THE facts appear from the judgment.

Navaratnam, for the appellants.

H. V. Perera, for the respondents.

December 8, 1922. DE SAMPAYO J.—

The real appellant in this case is the second plaintiff, although the petition of appeal is filed by the proctors who originally had a proxy from both plaintiffs. The plaintiffs, as lessors of seven-ninths share of a certain land, sued the defendants, their lessees, for a cancellation of the lease and for damages, on the ground that in violation of their obligation under the lease they had caused damage by cutting down trees. The defendants filed a defence disputing the plaintiffs' claim. The plaint and the answer were filed as long ago as August and October, 1920. In January, 1922, the defendants' proctor moved that no steps having been taken for more than a year, the action to abate. If this motion had been dealt with *simpliciter*, much difficulty which has now arisen would have been avoided. But in connection with that motion certain discussions took place on September 5 last. It was then admitted that the first plaintiff, who is said to be a lunatic, had disappeared. The plaintiffs' proctor stated that he could not proceed on behalf of the second plaintiff alone, because he was suing for a cancellation of the lease to which the absent plaintiff was also a party. The defendants' proctor undertook to take proceedings under chapter 39 of the Civil Procedure Code, and the case was ordered to be called on September 26. On that day the record reads: "That it was agreed both by the plaintiff and the defendant that the first plaintiff was a lunatic, but he cannot be adjudged a lunatic as his residence is not known, and steps cannot be taken under the section applicable to the matter." The Court then ordered that the case must be laid by pending the taking of further steps to have the first plaintiff declared a lunatic. The present appeal was filed on behalf of the plaintiffs from that last order. Counsel on behalf of the plaintiffs-appellants tells us that what is desired is to allow the second plaintiff to go on with the action so far as his share of the property is concerned. He cites sections 12 and 17 of the Civil Procedure Code in support of this desire on the part of the second plaintiff. But it is clear that neither of those sections applies to the circumstances of the present case. If the first plaintiff cannot be traced and his condition adjudicated on it seems to me that the only alternative that the second plaintiff has is to withdraw from this action and institute, if he is advised, a separate action on his own account. This appeal is not sustainable, and it is, therefore, dismissed, with costs.

SCHNEIDER J.—I agree.

Appeal dismissed.

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*Appuhamy
v. William
Singho*