

16, 1939

No. 58 of 1937.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND
OF CEYLON.

BETWEEN

SIMON CHRISTOPHER JAYAWARDENE (Plaintiff) *Appellant*

AND

- 10 (1) ALFRED CHRISTY JAYAWARDENE
(2) DR. FREDERICK NICHOLAS JAYAWARDENE
(3) GEORGE LLEWELLYN JAYAWARDENE

and

- (4) THE HONOURABLE THE ATTORNEY-GENERAL
OF CEYLON (Defendants) - - - - *Respondents.*
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Case

FOR THE FOURTH-NAMED RESPONDENT.

RECORD.

1. This is an appeal from the Judgment and Decree both dated the 4th December 1936 of the Supreme Court of the Island of Ceylon reversing a Judgment and Decree both dated the 5th July 1935 of the District Court of Kalutara.

pp. 25 and 26.
pp. 17 and 20.

20 2. By an Indenture No. 29, executed on the 29th day of October 1919 and the 23rd day of February 1920 the Crown let and demised unto J. V. G. Jayawardene Gate Mudaliyar his heirs executors administrators and permitted assigns certain premises described in the Schedule to the said Indenture in perpetuity subject to a condition that the said Jayawardene should not sub-let sell donate mortgage or otherwise dispose of or otherwise deal with his interests in the said lease or any portion thereof without the written consent of the Crown and that every such sub-lease, sale, donation or mortgage without such consent should be absolutely void.

p. 33.

Case for fourth named Respondent

pp. 39-47.

3. By Deeds No. 175, 178, 179 and 180 dated respectively 27th May, 28th May, 30th May and 30th May 1927, the said Jayawardene reserving a life interest for himself made irrevocable gifts of an undivided one fourth share of his interest in the premises let and demised to him by the said Indenture No. 29 to each of his four sons, the Appellant and the first three Respondents.

p. 55.

4. The said Jayawardene died on the 19th January 1930 leaving a last Will No. 824 dated the 28th October 1928, whereby subject to the payment of a certain legacy he gave and devised all his property to the Appellant and appointed him Executor.

5. On the 17th day of December 1934

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THE PRESENT SUIT

was instituted inter alia for a declaration that the Appellant was entitled as against the first three Respondents to the said premises on the ground that the deeds of gift Nos. 175, 178 and 179 to the first three Respondents respectively were executed by the said Jayawardene without the written consent of the Crown and were therefore void.

This Respondent (representing the Crown) was made a defendant to the suit but no relief was claimed against him.

No Answer was therefore filed by this Respondent nor was he represented in the District or the Supreme Court.

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p. 5.

6. In their Answer the first three Respondents denied that the deeds of gift were void and pleaded inter alia that they were effective for the purpose for which they were executed.

p. 10, l. 19.

p. 10, l. 23.

7. It was admitted in the course of the proceedings in the District Court that no consent was given by the Crown to the said deeds of gift, and, of the Issues agreed, the only one in which the rights of this Respondent are in any way referred to was the first which was : " Are the deeds of gift good and valid until they are set aside at the instance of the Crown ? "

p. 17.

8. The District Court gave judgment in favour of the Appellant and held inter alia that the said deeds of gift were absolutely null and void in view of the absence of the consent of the Crown thereto.

p. 29, l. 14.

9. From this Judgment the first three Respondents appealed to the Supreme Court which held that " The lessor " (the Crown) " may bring an action to secure a cancellation of the lease if he so desires, but till the lease is cancelled the deed of gift must remain operative as between the parties." It set aside the Decree of the District Court and dismissed the Appellant's claim.

10. It is submitted on behalf of this Respondent that the right of the Crown to sue for a declaration that the lease has determined and that the said deeds of gift are void has not been affected by the decree of the Supreme Court, and that in any order that may be made in this Appeal the right of the Crown to institute a separate action to have the said Deed of Lease No. 29 declared cancelled and the said deeds of gift declared void should be left unimpaired for the following among other—

REASONS.

- 10 (1) BECAUSE neither the Appellant nor the first three Respondents put in issue any question relating to the rights of the Crown against all or any of them in respect of the said Deed of Lease.
- (2) BECAUSE no such issue was tried.
- (3) BECAUSE in any event the Supreme Court was right in holding that notwithstanding the position as between the other parties the lessor (the Crown) “may bring an action to secure a cancellation of the lease if he so desires.”
- 20 (4) BECAUSE the position of the Crown is and should be held to be unaffected by either of the said Judgments.

L. M. D. DE SILVA.
KENELM PRFEDY.

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ON APPEAL

*From the Supreme Court of the Island of
Ceylon.*

BETWEEN

SIMON CHRISTOPHER JAYAWARDENE
(Plaintiff) - - - *Appellant*

AND

- (1) **ALFRED CHRISTY JAYAWARDENE;**
 - (2) **Dr. FREDERICK NICHOLAS
JAYAWARDENE;**
 - (3) **GEORGE LLEWELLYN
JAYAWARDENE and**
 - (4) **The Honourable THE ATTORNEY-
GENERAL OF CEYLON (Defendants)**
Respondents.
-
-

Case

FOR THE FOURTH-NAMED RESPONDENT.

BURCHELLS,

5 The Sanctuary,

Westminster, S.W.1,

Solicitors for the Fourth-named Respondent.