

(Appellate Provincial Division).
Provinciaal Afdeling).

ERAZHIM MAHMOED JENNA Appellant,

VERSILS

versus

J G. STRYDOM NO Respondent.

Appellant's Attorney *M. A. White* Respondent's Attorney *Hande & U*
Prokureur vir Appellant Prokureur vir Respondent

Appellant's Advocate *F. Finlay, R.C.* Respondent's Advocate *P.A. Roberts, R.C.*
Advokaat vir Appellant *F. Finlay* Advokaat vir Respondent *P.A. Roberts*

Set down for hearing on
Op die rol geplaas vir verhoor op TUESDAY 11th MARCH 1951

Op die rol geplaas vir verhoor op

9.45-12.50

2.15 - 4 pm.

Poster: 21/3/53.

Appeal dismissed, with costs.

O'Connell, C.T.
 Greengard, Schreiner,
 W. H. Hines + Fagan, - J.T.A.
 21-3-55.

21-3-55

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between :-

EBRAHIM MAHOMED JEENA

Appellant

&

THE MINISTER OF LANDS

Respondent

CORAM :- Centlivres C.J., Greenberg, Schreiner, v.d. Heever
et Fagan JJ.A.

Heard :- 15th March 1955. Delivered :- 21-3-55

J U D G M E N T

CENTLIVRES C.J. :- In 1952 W.P. Scheepers made an application to the Secretary for Lands in terms of Sec. 11 of the Land Settlement Act (Act NO. 12 of 1912). In this application he requested that Lot No. 15(A) and Lot No. 21 of the farm Roodekopjes be purchased by the Minister of Lands for settlement purposes on behalf of himself. Both of these lots were owned by Mrs. Olivier who had let portion of Lot No. 21 to the appellant. This lease was due to expire on April 30th, 1953. The application made by Scheepers was granted and in due course the Government bought the two lots and obtained transfer thereof in ~~in~~ the Deeds Registry. Scheepers entered into occupation of the two lots, excepting that portion of No. 21 which was occupied

by the appellant. The appellant refused to vacate that portion and in July 1953 the Minister of Lands sued the appellant in a magistrate's court for ejectment. He based his claim on the fact that the Department of Lands was the owner of Lot. 21 and that appellant was in unlawful occupation. It would have been more accurate to have alleged that the Government was the owner but it was rightly conceded by counsel for the appellant that nothing turns on this. The magistrate granted an order of ejectment and the appellant appealed unsuccessfully to the Transvaal Provincial Division which granted him leave to appeal to this Court.

It was common cause that the Government is the owner of Lot N0 21 and it is clear that the allegation in the summons that the Government was the owner and that the appellant was in wrongful occupation disclosed a good cause of action. See Myaka v Havemann - 1948 (3) S.A. 457 at p. 465 (A.D.) and the cases there referred to. In addition to the cases there referred to, there is the case of Gordon v Kamaludin (Sep. 15, 1927 T.P.D., unreported) the facts of which are set out in Graham v Ridley (1931 T.P.D. 476 at pp. 478 and 479). It seems to me that the view taken by Greenberg J. in that case is the same as that expressed in

Mayaka's case. The learned judge said :-

" The appellant alleges, in his particulars, that he is the registered owner of the property. This is denied in the plea but is proved by the evidence led on the appellant's behalf. The evidence also shows that the respondent is in possession of the property and refuses to quit in spite of the appellant's demand. One of the rights arising out of ownership is the right to possession; indeed Grotius (Introd. 2.3.4.) says that ownership consists in the right to recover lost possession. Prima facie therefore proof that the appellant is owner and that the respondent is in possession entitles the appellant to an order giving him possession i.e. to an order for ejectment.

.....

.....

This prima facie right of the owner could be met by the respondent by proof that he had been given the right to possession either by the appellant or by some ~~other~~ person who was entitled to grant such right and that the right was still current. In such a case the onus would be on the plaintiff to prove his ownership and the defendant's possession ; once he discharged this onus, the onus would be on the defendant to prove the grant of the right of possession to him. "

It being common cause that the Government is the owner of Lot No. 21 the onus rested on the appellant to show that he was entitled to occupy that Lot or any part of it. It is from clear ~~from~~ the record that the lease which the appellant originally held had expired by effluxion of time and that the appellant could not, in view of the decision of this Court in

Evans v Schoeman N.O. (1949 (1) S.A. 571), rely on the Rents Act as entitling him to remain in occupation of portion of Lot No. 21 as that Act does not bind the Crown. I would have thought that on these facts there would have been nothing to be said in support of this appeal. But Mr. Findlay on behalf of the appellant put forward an elaborate argument with which I must now deal.

The only contention raised by Mr. Findlay was that, although the Government was the registered owner of Lot No. 21, it was not entitled to sue for ejectment and that the only person who, in the circumstances of this case, could sue was Scheepers against whom the appellant could rely on the Rents Act. Counsel contended that Scheepers, vis-a-vis the appellant, entered into possession of Lot No. 21 before the action was instituted and became exclusively possessed of it and that the possessory remedy was not available to the Government. There is no substance in this contention. Scheepers did not enter into occupation of that portion of Lot No. 21 which was occupied by the appellant. The Government having undertaken to purchase Lot No. 21 in order that Scheepers should settle there was clearly entitled to take all reasonable steps to give Scheepers vacua possessio^s

of the whole of Lot No. 21. As the registered owner of that Lot the Government was entitled to an ejectment order against the appellant who was unable to set up as against the Government any valid claim to the possession or detentio of that portion of the lot which he occupied.

It was further submitted by Mr. Findlay that the general scheme of the Land Settlement Act was such that the Government holds the nude dominium in securitatem merely and that it was never intended that the Government should take possession. But the object of the Act is to settle persons on land and in carrying out that object I can see no reason why the Government should not take possession of land bought by it for the purpose of the Act in order to place a settler on that land.

The appeal is dismissed with costs.

Ans. Cantor

Greenberg JA
Schreiner JA,
vd Heuer JA
Jagan JA

concur