Is whether a lessee of rural premises may sublet without the lessor's consent.

There is a conflict in Roman-Dutch law of whether or not a lessee of rural premises may sublet without the owner's consent.

This matter depends on 3 placats, one of which is a placat of 1 state of Holland 1658. Article 9 of this placat reads 'Nor shall any occupier/tenant, either pending or during a lease or after expiration of a lease thereof, make over directly or indirectly zoodanige hyre of land by sale, exchange or donation or any other contract without the owner's written consent.'

1 placat of Charles Visits, 1 Political Ordinance of 1580, 1 placat of 1 States of Holland 1658 remain in force except for some conditions of Article 9. Placat of 1515 states 'No tenant shall be allowed to transfer any lease after expiration unless with consent.' Political ordinance of 1580 re-enacted the placat of 1515. Grotius 1620 said tenant may let a hired property again unless otherwise agreed.

van leeuwen after 1658 stated that lessee may sublet without consent. Rural property was not mentioned. Voet 1668 held that leased lands cannot be sublet.
Grothuys, Von Leeuwen, Groenewegen & Wassenaar held that lessor may sublet but Voet & Neostadius did not.

Many conflicting views of authority, but 1 placaat of 1658 is part of our law, but sec 9 does not apply to subletting. The correct view is that lessor of rural property is free to sublet.

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No alienation of land after commencement of this section shall subject to prov of sec 28 be of any force or effect unless it is contained in a deed of alienation signed by 1 parties thereto or their agents acting on their written authority.

Alienation is defined in sec 1 as to “sell, exchange, donate” This is a contract of sale of land which is oral & thus void.

Where one or both of 1 parties have rendered partial or full performance before they became aware of formal requirements.

Sec 28 regulates 1 position as follows.

(1) If 1 person to whom land has been alienated has rendered full performance & 1 land has been transferred to her, then that alienation is ab initio voided in every respect; even though formal req have not been met.
Neither party can reclaim performance. It is avoid contract which has become completely valid with retrospective effect.

(2) If 1 person to whom land has been alienated has rendered partial or full performance but 1 land has not been transferred to her. Each party is entitled to reclaim from 1 other what she has performed.

Alienee is also entitled to interest on any amount which she may have paid in terms of 1 D.O.A. Calc from 1 date of payment to 1 date of recovery @ a rate prescribed by 1 minister. She is also entitled to compensation for necessary and useful expenses she may have incurred in connection with 1 land.

1 alienator is also entitled to reasonable compensation for 1 occupation, use or enjoyment which 1 alienee may have had on 1 land as well as compensation for any damage cause negligently or intentionally by 1 alienee to 1 land or by a 3rd person for whose actions 1 alienee is liable.

Sec28(1) applicable to 1 alternative scenario. Contract is thus valid ab initio.

Sec28(2) is applicable to 1st scenario. P may claim back 1 Rs100 000 from S plus interest from 1 date of payment to 1 date of recovery.
P may claim reasonable compensation for necessary & useful expenses P spent on J house. J cost of building of J swimming pool may be regarded as a useful expense. S is entitled to reasonable compensation for J occupation, use or enjoyment which P may have had on J land.

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