

PREMARATNE

v.

KODITUWAKKU ARACHCHI

SUPREME COURT
DHEERARATNE, J.
WADUGODAPITIYA, J. AND
GUNASEKERA, J.
SC APPEAL 55/96
CA 926/82 (F)
DC KANDY 1416/RE
6th OCTOBER, 1999

Landlord and tenant - Subletting of premises - Right of purchaser of premises to sue tenant - Defendant's plea of using premises for a business.

The plaintiff-respondent (the respondent) who purchased the premises in dispute in 1979 from the Ceylon Insurance Corporation filed action on 17.07.1980 for ejectment of the 1st defendant - appellant (the appellant) and the 2nd defendant (one Ranasinghe) from the premises. The first ground of ejectment was arrears of rent and the second was that the appellant had sublet the premises to the 2nd defendant without the written permission of the landlord. The original landlord was the Ceylon Insurance Corporation. The evidence led at the trial showed that there was an ongoing business of a hotel being run on the premises at the time it was handed over to the 2nd defendant. The respondent admitted that at the time he purchased the premises the 2nd defendant was running a business there. There was also a notarially executed document IV10 by which the appellant gave the management of running an "eating house" in the premises to the 2nd defendant. At the trial it was proved that the appellant was not in arrears of rent. As regards the 2nd ground of ejectment, the District Judge held that no subletting had been proved.

Held :

Per Dheeraratne, J.

(1) "The proposition that where a tenant of any premises sublets them in contravention of the Rent Act and the premises are thereafter sold by the landlord to a 3rd party, the purchaser is entitled to maintain an action for the ejectment of the tenant and the subtenant, is amply covered by authority and there is no dispute about that"

(2) There is no evidence to show that the document IV10 is a sham and not the document that it purported to be.

Cases referred to :

1. *Rathnasingham v. Catheraswamy* (1956) 58 NLR 476
2. *Thaha v. Sadeen* (1968) 72 NLR 142
3. *Sumanasena v. Herft* (1991) 2 Sri LR 342

APPEAL from the judgement of the Court of Appeal

P. A. D. Samarasekera P. C. with G. L. Geethananda and Keerthi Sri Gunawardena for substituted 1st defendant - appellant.

A. K. Premadasa P. C. with C. E. de Silva for plaintiff - respondent.

Cur. adv. vult.

October 26, 1999

DHEERARATNE, J.

The plaintiff - respondent (respondent) as landlord, filed action against the original 1st defendant - appellant (appellant) and the 2nd defendant one Ranasinghe, to have them ejected from premises bearing assessment no. 23/16 Dalada Veediya, Kandy. The 1st ground of ejection was arrears of rent and the 2nd was that the appellant had sublet the premises to the 2nd defendant without the written permission of the landlord. The original landlord of the appellant in respect of the demised premises was the Ceylon Insurance Corporation. The respondent purchased the premises in 1979 and filed the present action against the defendants on 17.07.1980. The respondent thus based his 2nd cause of action on the alleged subletting of the premises by the appellant during the time he was a tenant of the former landlord. The proposition that where a tenant of any premises sublets them in contravention of the Rent Act and the premises are thereafter sold by the landlord to a 3rd party, the purchaser is entitled to maintain

an action in ejectment of the tenant and the subtenant, is amply covered by authority and there is no dispute about that. See *Rathnasingham Vs. Catheraswamy*⁽¹⁾ and *Thaha Vs. Sadeen*⁽²⁾.

At the trial it was proved that the appellant had duly paid all rent in respect of the premises to the local authority and that he was not in arrears of rent. The learned trial judge held that no subletting had been proved. However, the Court of Appeal reversed that finding reached by the learned trial judge. The only reasoning given by the Court of Appeal in its somewhat brief judgment to reverse the finding, was as follows - "There is evidence to show that the 1st defendant-respondent sublet the premises to the 2nd defendant-respondent, for otherwise there is no reason for the 2nd defendant-respondent to pay the 1st defendant-respondent. If as said by the defendants (the) 2nd respondent was the manager of the 1st respondent - defendant's business he should have monthly paid the 2nd defendant - respondent".

At the trial evidence was led to the effect that in January 1974 by a notarially executed document IV10 the appellant gave the management of running an "eating house" carried on in the premises in question to the 2nd defendant on a commission basis at the rate of Rs. 15/= a day. The learned trial judge considered the evidence led that there was an ongoing business of a hotel being run in the premises at the time it was handed over to the 2nd defendant. The respondent admitted that at the time he purchased the premises in 1979 the 2nd defendant was running a hotel there. The learned trial judge considered the evidence given by the appellant that at some point of time a carpentary shop was carried on at the premises. However, on the evidence led he was satisfied that what was handed over by the appellant to the 2nd defendant was an ongoing business of a hotel. The evidence given by the appellant that as he fell ill about 1974, he was compelled to go to his sister who lived at Kantale, leaving the management of the business in the hands of the 2nd defendant, was accepted

by the learned trial judge. It is clear, although not said so expressly by the trial judge, on the evidence led, he considered the occupation of the premises by the 2nd defendant was subordinate to the rights conveyed by document IV10. (see *Sumanasena v. Herft*⁽³⁾.)

Learned counsel for the respondent relied strongly on the Business Names Registration Certificate for the year 1979 in respect of the business run in the premises. This document in my view is also consistent with the position of the management of the business having being handed over to the 2nd defendant. There is no evidence led or elicited in cross examination to show circumstances pointing to the fact that the document IV10 is a sham and not the document that it purported to be.

For the above reasons I set aside the judgement of the Court of Appeal and affirm the judgement of the District Court. The appellant is entitled to a sum of Rs. 10,000/= as costs of this appeal.

WADUGODAPITIYA, J. - I agree.

GUNASEKERA, J. - I agree.

Appeal allowed.