

**WIJAYAWARDANE**  
**v.**  
**MALINI WIJAYAWARDANE**

COURT OF APPEAL  
EDUSSURIYA, J.,  
JAYASINGHE, J.  
C.A. NO. 609/92 (F).  
D.C. KANDY NO. 16270/L.  
OCTOBER 27, 1998.

*Rent Act, No. 7 of 1972 – Can the lessee sublet for a period exceeding the period of the lease? – Vacua Successio.*

The plaintiff-appellant instituted action for a declaration that she is the lessee of the premises in suit and ejection of the defendants. One W took on lease by a deed, a bare land from the temple and constructed two houses thereon; the defendant-respondent took on rent the said premises. W died, and the plaintiff-appellant who is the widow of W obtained a lease of the property on the expiration of the existing lease from the said temple for a further period of 20 years from 1.5.1989 and alleged that the contract of tenancy the defendant had with the W came to an end with the execution of the subsequent lease, and that the defendant became a trespasser.

It was contended that, the tenancy of the defendant existed only up to the expiration of the lease on 30.4.89 (P1) and the lessee cannot sublet the premises for a period exceeding the period of the lease and since the defendant disputed the title of the plaintiff she is not entitled to claim tenancy.

**Held:**

1. W had only a limited right to the property in that he was himself a lessee of the temple.
2. W's rights not being absolute he was only a person who under an agreement with the defendant was entitled to receive rent for so long as the lease was operational.
3. The limited rights W had fell short of full ownership. When the lease expires all the rights he and his heirs enjoyed under the said lease also came to an end. The defendant who enjoyed the subtenancy lost her rights and became a trespasser, no tenancy survived after the death of W.

**APPEAL** from the judgment of the District Court of Kandy.

**Cases referred to:**

1. *Gunaratne v. Thelenis* – 47 NLR 433.
2. *Sideek v. Sainambu Nathiya* – 55 NLR 367.
3. *Mohamed v. Public Trustee* – [1978-79-80] 1 Sri L.R. 1.
4. *Hameed v. Anamalay* – 47 NLR 558.
5. *Issadeen Mohamed v. Singer Sewing Machine Company* – 64 NLR 407.
6. *Jayatunga v. Rosalin Hamy* – 78 NLR 213.
7. *Britto v. Heenatigala* – 57 NLR 327.
8. *Gunapala v. Baby Nona* – 1986 vol. 2 CALR 167.
9. *Seelamuttu v. Medonza* – 1986 vol. 2 CALR 318.
10. *Fernando v. de Silva* – 69 NLR 164.

*Cur. adv. vult.*

September 1, 1999.

**JAYASINGHE, J.**

The plaintiff instituted action in the District Court of Kandy for a declaration that the plaintiff is the lessee of the premises in suit; for ejectment of the defendant and her agents therefrom; for damages in a sum of Rs. 500 per month from 01.07.1989 and for costs. It is common ground that one Dr. Wijewardena took on lease by deed No. 13105 of 28.6.1969 a bare land 1/4 acre in extent from the Suduhumpola Rajamaha Viharaya and constructed two houses thereon and the defendant took on rent the premises bearing assessment No. 26 set out in the second schedule to the plaint on a monthly rent of Rs. 125 from 12.10.1973. Dr. Wijewardena died on 28.10.1986. The plaintiff who claimed to be the widow of Dr. Wijewardena had thereafter obtained a lease of the said property upon the expiration of the existing lease P1 from the said temple by deed No. 936 of 12.12.1988 for a further period of 20 years from 01.05.1989 and alleged that the contract of tenancy the defendant had with Dr. Wijewardena came to an end with the execution of the subsequent lease and that the defendant became a trespasser from the date

thereof. Dr. Wijewardena is the brother of the defendant. Consequent to a disagreement the defendant had with Dr. Wijewardena he refused to accept rent from January, 1981, and the rent was deposited with the Kandy Municipal Council. She has been depositing the rents payable since then. The defendant claimed that she is protected under the provisions of the Rent Act, No. 7 of 1972 and moved for dismissal of the plaintiff's action.

It was contended on behalf of the plaintiff that the tenancy of the defendant existed only up to the expiration of P1 on 30.04.1989 and that the lessee (Dr. Wijewardena) cannot sublet the premises for a period exceeding the period of the lease and that since the defendant disputed the title of the plaintiff she is not entitled to claim tenancy.

The main question for determination therefore was whether the tenancy of the defendant came to an end with expiration of the lease P1 Dr. Wijewardena obtained from the temple. Dr. Wijewardena had died on 28.12.1986 during the period P1 was in force. It is in evidence that the defendant was in occupation of the premises when the plaintiff obtained the second lease from 01.05.1989 marked P2. It is not in dispute that the defendant has been paying rent regularly to Dr. Wijewardena or deposited rent with the Kandy Municipality. What then was a status of the defendant when the lease expired? Did the defendant become a tenant under the plaintiff. Mr. Daluwatte submitted that when the landlord dies his heirs step into shoes of the landlord so that immediately on the death of Dr. Wijewardena the plaintiff became the landlord of the defendant and that the subsequent lease obtained by the plaintiff did not terminate the landlord-tenant relationship between the parties. It was the contention of the plaintiff that the premises reverted to the Rajamaha Viharaya on the expiration of the lease P1 on 30.04.1989 and that the defendant accordingly became a trespasser. This argument was placed on the basis that Dr. Wijewardena the lessee of the temple could not as a matter of law sublet the premises beyond the period of his lease. Any subtenancy created by him also came to an end.

It was submitted on behalf of the defendant that the defendant who came into occupation of the premises as a tenant of the lessee

and continued as such during the subsistence of the lease in favour of Dr. Wijewardena, became a statutory tenant of the premises by overholding at the termination of the lease and therefore entitled to the protection of the Rent Act. Mr. Daluwatte in support of his argument relied on a number of authorities. In *Gunaratne v. Thelenis*<sup>(1)</sup> it was held that a lessee can plead the benefit of section 8 of the Rent Restriction Ordinance where the premises in question were occupied by him under a notarial lease which has terminated by effluxion of time. The terms of the Rent Restriction Ordinance are wide enough to apply to premises leased as well as to premises held on a tenancy from month to month. In *Sideek and Sainambu Natchiya*<sup>(2)</sup> it was held that a tenant who enjoys under the Rent Restriction Act a statutory right of occupation notwithstanding the termination of the earlier contract of tenancy must continue to pay rent at the original monthly rate; if he fails to honour this obligation and is in arrears of rent for one month after it has become due section 13 (1) (a) may be brought into operation to eject him.

In *Mohamed v. Public Trustee*<sup>(3)</sup> it was held that on the death of the landlord his heirs became vested with the contractual rights and obligations in respect of the premises and there was a valid contract of tenancy with the appellant at the time the respondent gave him notice to quit the premises. In *Hameed v. Anamalay*<sup>(4)</sup> it has been held that a person who takes a lease of premises knowing that there are already in occupation a tenant holding under a prior contract of tenancy cannot avail himself of the provisions of proviso C of section 8 to eject the tenant on the ground that he requires the premises for his own use and occupation. In *Izadeen Mohamed v. Singer Sewing Machine Company*<sup>(5)</sup> where any premises are sold by a landlord while tenant is in occupation thereof the purchaser can either insist on the vendor giving him vacant possession or with notice to the tenant in occupation of the premises elect to take the premises with the tenant. If the purchaser fails to give notice of election to the tenant the contract of tenancy between the vendor and the tenant subsists and it is only the vendor who is competent to terminate the contract of tenancy. The above cases referred to by Mr. Daluwatte are of no application to the present case. These cases refer to landlord and tenant situations. However, in the present case Dr. Wijewardena had only a limited right to the property in that he was himself a lessee of the Rajamaha Viharaya. In *Jayathunga v. Rosalin Hamy*<sup>(6)</sup>

one Anthony Fernando was the original owner of the premises in suit. By his last will he bequeathed the premises to his daughter Mary Fernando subject to a *fidei commissum* in favour of latter's children. Mary Fernando died on 23.4.1968 and the children, the 1st to 6th plaintiffs, became the owners of the premises as *fidei commissary* successors. The defendant originally came into occupation of the premises as a monthly tenant under Mary Fernando. After the death of Mary Fernando the defendant tendered rent to the plaintiffs but they refused to accept the rents or the position that the defendant-respondent became their tenant upon the death of Mary Fernando. The plaintiffs, thereupon, sued the defendant for a declaration of title; ejection and damages on the basis that the contract of tenancy with Mary Fernando the fiduciary came to an end with the extinction of the fiduciary right and that the defendant had therefore become a trespasser. Defendant contended that upon the death of Mary Fernando she continued as a tenant of the plaintiffs and claimed protection of the Rent Restriction Act and prayed for dismissal of the action. It was held that the plaintiffs are not barred from maintaining the action inasmuch as they do not fall within the meaning of the term landlord as defined in the Rent Restriction Act. The Court held that the plaintiffs do not fall under the definition of the term landlord by reason merely of the fact that upon Mary Fernando's death they as *fidei commissary* became owners of the premises. They might have become the landlords if Mary Fernando had in her power to grant a lease of the premises extending beyond her life. But, that is exactly what she being only fiduciary could not do.

When Dr. Wijewardena sublet the premises to the defendant what was a capacity in which he sublet the premises? Tennakoon, CJ. in *Jayathunga v. Rosalin Hamy (supra)* observed that:

"Under the common law applicable in this branch of our law, the relationship between a landlord and a tenant is a contractual one . . . The contract of letting is ordinarily unrelated to the ownership of property being in the landlord . . . It seems to me therefore that when the Rent Restriction Act defines the term landlord as the person for the time being entitled to the rent of such premises it is referring in the first place to the person entitled under the contract of tenancy to receive the rent and not necessarily to the true owner who may not in relation to particular tenancy of the premises in question have been the person who let the premises". Tennakoon, CJ. cited a

passage by Gratiaen, J. in *Britto v. Heenatigala*<sup>(7)</sup>: "If the true owner of the leased premises vindicates his title against the contractual lessor the statutory protection which the tenant enjoys against his lessor would not be available against the true owner". Therefore, Dr. Wijewardena's rights not being absolute, he was only a person who under an agreement with the defendant entitled to receive rent for so long as P1 was operational. Tennakoon, CJ. also observed that a person who has no right whatsoever, whether absolute or limited to immovable property may nevertheless make a lease of such property. Such lease is valid between the landlord and the tenant but it does not follow that it is valid or effectual against the true owner of the property. Dr. Wijewardena's rights was a subjugated right vis-a-vis the true owner. Similarly, when the plaintiff obtained the lease P2 she was in the same position as *fidei commissary* successors of Anthony Fernando in *Jayathunga v. Rosalin Hamy* (*supra*). It seems, therefore, that the relationship between Dr. Wijewardena and the defendant was contractual and when P1 ended, the agreement between Dr. Wijewardena and the defendant also ended. Even though it is not necessary to go into the question of as to who the landlord is it is nevertheless helpful to determine the status of the defendant. On the reasoning of this judgment I am unable to agree with Mr. Daluwatte's submission that the defendant who came into occupation of the premises as a tenant of the lessee became a statutory tenant of the premises by overholding at the termination of the lease and therefore entitled to the protection of the Rent Act. With the extinction of P1 all rights that accrued to the lessee also came to an end. Therefore, it can never be said that the tenancy of the defendant survived even after the expiration of P1. In *Gunapala v. Baby Nona*<sup>(8)</sup> the plaintiff and his brother were the co-owners of the premises in suit. The grand uncle who had a life interest in the property granted a tenancy of the property to the defendant.

After the landlord's death the plaintiff requested the defendant to attorn to him and to pay him all arrears of rent. The defendant failed to attorn and to pay the arrears of rent. Plaintiff instituted action for the ejection of the defendant from the premises. The plaintiff claimed that on the cessation of the landlord's life interest the defendant's position was wrongful. The Supreme Court held that when the landlord has only a life interest in the property at the commencement of the tenancy the tenancy ends with the death of the landlord. In *Sellamuttu v. Madonza*<sup>(9)</sup> it was held that where a tenancy is created by a person

who has a limited right or interest less than ownership in the property it will be effective for the period of his own rights but not beyond it and held further that where the tenancy is created by a person who had absolute title to the property subsequent successors in title are bound by the tenancy. In *Fernando v. De Silva*<sup>(10)</sup> it was held that the death of the landlord does not terminate a contract of monthly tenancy; his rights and obligations pass then to his heirs. In such a case heirs are not entitled to seek ejection of the tenant without prior notice to quit. Manicavasagar, J. referred to the principle applicable expressed by Pothier: "A lease is not dissolved by the death of one of the parties; but in accordance with a rule common to all contracts the rights and obligations arising from the lease pass to the person of his heirs or to that of his *vacua successio*". This principle is subject to two exceptions:

(1) where the lessors title was one for his life only such a fiduciary interest or life usufruct, the death of lessor terminates the lease and;

(2) that where the lease is at the will of the lessor or the lessee the death of the lessor or the lessee as a case may be terminates the lease.

Admittedly, Dr. Wijewardena had only a limited right falling short of full ownership. Therefore, when P1 expires all the rights he and his heirs enjoyed under the said lease also came to an end. Consequently, the defendant who enjoyed the subtenancy lost her rights and became a trespasser. No tenancy survived after the death of Dr. Wijewardena on 28.12.1986.

For the foregoing reasons I set aside the judgment of the learned District Judge and allow the appeal with costs fixed at Rs. 2,100.

**EDUSSURIYA, J.** – I agree.

*Appeal allowed.*