

1967

Present : Tambiah, J.

G. V. MARTIN SILVA, Appellant, *and* MAHASOON and another,
Respondents

S. C. 370/1966—D. C. Matara, 1999/L

*Rent Restriction (Amendment) Act No. 12 of 1966—Scope of sections 2 and 4 (1) (c)—
Ejection of tenant on ground of rent being in arrears for over 3 months—
Decree entered on 12th March 1965—Enforceability—How long can an action
be regarded as pending?—Civil Procedure Code, s. 6.*

A decree for ejection entered in favour of a landlord against his tenant between 20th July 1962 and the date when the Rent Restriction (Amendment) Act No. 12 of 1966 came into operation, in respect of an action instituted during that time, is not rendered null and void and unenforceable by section 4 (1) (c) of the amending Act, if the judgment was obtained on the ground that rent was in arrears for three months or more.

An action must be considered as pending within the meaning of section 4 (1) (a) of Act No. 12 of 1966 if, after judgment is entered, the judgment-creditor has still to come to Court to obtain reliefs.

APPEAL from a judgment of the District Court, Matara.

A. K. Premadasa, with *F. C. Perera*, for the Defendant-Appellant.

H. Rodrigo, for the Plaintiffs-Respondents.

August 22, 1967. TAMBIAH, J.—

The plaintiffs brought this action on 13.3.64 against their tenant in respect of premises to which the Rent Restriction Act applied. They alleged that the tenant was in arrears of rent from 1st July 1962 and

prayed for ejectment of the tenant on this ground. On 12.3.65 the parties arrived at a settlement and judgment was entered as prayed for and decree was entered on 12.3.65.

The Rent Restriction (Amendment) Act No. 12 of 1966 came into operation on the 10th May 1966. The plaintiffs applied for ejectment of their tenant in terms of the decree but their application was resisted on the ground that the decree was null and void under the provisions of Section 4 of the Rent Restriction (Amendment) Act No. 12 of 1966. The learned Commissioner, however, held that the decree was executable.

The Counsel for the appellant contends that under Section 4 (1) (c) of the Amendment Act No. 12 of 1966, all decrees entered between the 20th July 1962 and the date this Act came into operation are null and void. It may be noted that Section 4 of this Amending Act makes the Act retrospective as from 20th July 1962. Counsel for the appellant concedes that had this action been brought after the Amending Act came into operation the decree would not have been null and void. I am unable to accept the argument of Counsel for the appellant that the decree is void because it was entered prior to the coming into operation of the Amending Act. If such a view is tenable then it will lead to the result that all actions filed by a landlord after this Act came into operation on the ground that his tenant was in arrears for 3 months are permissible and decrees entered are valid whereas actions brought on the same ground during the preceding period, namely between 20th July 1962 and 10th May 1966 are null and void.

Section 4 (1) (c) of the Amendment Act enacts "proceedings shall not be taken for the enforcement of any judgment or decree in any such action *as is referred to in paragraph (a)*, and where such proceedings have begun before the date of commencement of this Act, but have not been completed on the date of commencement of this Act, such proceedings shall not be continued." A distinction, therefore, is made between decrees in such actions as are referred to by Section 4 (1) (a) and other decrees.

Before the Rent Act was passed a landlord could terminate the tenant's contract and bring an action to eject him. The Rent Act does not take away the rights of a landlord but only operates as a bar to his action. The Rent Act, before the Rent (Amendment) Act No. 12 of 1966 came into operation, permitted a landlord to bring an action to eject the tenant on certain grounds set out in Section 13 of that Act. Under that Act, a landlord need not have waited for a tenant to be in arrears for a month. He could also have brought an action if he reasonably required the premises for his own use and also on other grounds set out in that Section. The Rent Restriction (Amendment) Act No. 12 of 1966 was enacted to protect tenants who occupied premises the rent of which was less than Rs. 100. At the same time it also gave a right of action to a landlord in certain circumstances set out in Section 2 of the Amending Act. Although the rental may be less than Rs. 100 a landlord is entitled to institute action for ejectment where

the rent of the premises had been in arrears for 3 months or more. In my opinion Section 4 (1) (a) only renders null and void, actions which are in contravention of Section 2 of the Amending Act No. 12 of 1966. In the instant case the landlord is permitted to bring an action for ejectment since the tenant was in arrears for over 3 months and therefore the decree entered is not null and void.

It was further contended by Counsel for the appellant that the action was not pending. If his argument is carried to its logical conclusion, then Section 4 (1) (a) has no application. But it suffices to state that when a judgment is entered the action is pending if the judgment creditor still has to come to Court to obtain reliefs. In *Salt v. Cooper*,¹ Jessel M. R. said, "A cause is till pending, even had there been a final judgment given, and the Court has very large powers in dealing with a judgment until it is fully satisfied. It may stay proceedings on the judgment, either wholly or partially, and the cause is still pending, therefore, for this purpose, as it appears to me, must be considered as pending although there may have been a final judgment given in the action, provided that judgment has not been satisfied."

It is true no doubt that the plaintiffs had obtained judgment in this case, but they have not realised the fruits of their litigation. Under Section 6 of the Civil Procedure Code they could make an application for relief or remedy for ejectment as well as for the recovery of damages. This is an action within the meaning of Section 6 of the Civil Procedure Code, vide also the judgment of Sansoni, C.J., in *Abeyasinghe v. Gunasekara*². In *Charles Fernando v. T. P. D. Costa*³, a bench of two judges gave a similar interpretation to Section 4 (1) (c) of the Rent (Amendment) Act of 1966 and with respect I agree with that view.

For these reasons I affirm the order of the learned District Judge and dismiss the appeal with costs.

SIVA SUPRAMANIAM, J.—I agree.

Appeal dismissed.
