

1971

Present : G. P. A. Silva, S.P.J.

M. A. J. PARACK, Appellant, and A. R. M. FASI, Respondents

S. C. 173/69—C. R. Colombo, 96896/RE

Rent Restriction Act (Cap. 274)—Section 12 A (1) (a)—Tenant in arrears of rent—Notice to quit—Payment of arrears thereafter—Liability of the tenant nevertheless to be evicted—Admission, in trial Court, of the validity of the notice to quit—Whether the validity can be challenged in appellate Court.

In an action in ejectment in respect of premises subject to section 12 A (1) (a) of the Rent Restriction Act, the tenant is liable to be evicted if, even though he has paid all arrears of rent at the time of the institution of the action, he was in arrears at the time when the cause of action arose. In such a case the material point of time is the time when the cause of action arose.

Samarakoon v. Gunadasa (74 N. L. R. 62) followed.

Mohamed v. Wahab (72 N. L. R. 333) not followed.

Where a tenant admits at the trial the validity of the notice to quit that was given to him by his landlord, he will not be entitled to contend for the first time in appeal that the notice was not valid or that it was invalid on the ground that there was no relationship of landlord and tenant between the parties at the time when the notice to quit was given.

APPPEAL from a judgment of the Court of Requests, Colombo.

N. S. A. Goonetilleke, with (*Miss*) *L. R. Breckenridge*, for the defendant-appellant.

Bimal Rajapakse, for the plaintiff-respondent.

October 22, 1971. G. P. A. SILVA, S.P.J.—

The plaintiff in this case sued the defendant for arrears of rent and ejectment from certain premises. One of the averments in the plaint was that the plaintiff, by writing dated 6th January 1967, gave notice to the defendant to quit and deliver possession of the said premises on 30th April 1967, as he was in arrears of rent from the 1st of August 1964. The notice referred to was produced in the case as D5, which was dated 6th January 1967. It was further averred that the defendant was in arrears of rent from the 1st August 1964 to 31st October 1967, and was thus in arrears of rent for more than three months after it became due. The position taken up by the defendant in his answer was that he originally became the tenant of one Farook in December 1961 and subsequently of one Mukthar as from 1st March 1963, Mukthar being the brother of the plaintiff, that he paid rent due for the period March 1963 to August 1964, to the said Mukthar and obtained receipts from him and

that he deposited at the Rent Department of the Colombo Municipality, rents for the months of September, October and November 1964 in favour of the said Mukthar. He also averred that after Mukthar died on or about 14th December, 1964, he was unaware of the heirs of the said Mukthar or the person to whom the rents should be paid and that immediately after he became aware that the plaintiff had applied for probate in respect of the estate of the said deceased Mukthar, he deposited all rents in the Rent Department of the Colombo Municipality.

At the trial, Counsel for the defendant admitted the notice to quit, and having regard to the course that the trial took; one has to presume that the admission was that the notice was correct and there was no obligation therefore on Counsel for the plaintiff to raise any issues as to the giving of the notice or the validity thereof. It is important to bear that in mind for the reason that in this Court one of the main submissions made in regard to the ejection was that at the time notice was served by the plaintiff, he had not become the landlord of the defendant, and that therefore, the notice was not a valid notice. The four issues that were raised by the plaintiff were—

1. Did the plaintiff let the premises in suit to the defendant ?
2. Has the defendant been in arrears of rent for the period 1st June, 1966, to 30th September 1967 ?
3. If issue (1) or issues (1) and (2) are answered in the affirmative, is the plaintiff entitled to a decree in ejection ?
4. What amount is due to the plaintiff by way of rent and damages ?

The learned Commissioner found in favour of the plaintiff in respect of the first three issues and set down the damages at Rs. 15 a month from 1.7.69. If, as I hold he was, the learned Commissioner was correct in his decision as far as issues 1, 2 and 3 were concerned the plaintiff was entitled to succeed in this action, and in view of the admission made by the learned Counsel at the trial on the basic issues, the argument of Counsel in this Court that the notice was not a valid notice or that it was invalid, because it was an action before the relationship of landlord and tenant was established, cannot succeed.

A further point taken up by the Counsel for the Appellant was that, in any event, at the time of the institution of the action all arrears of rent had been paid by the defendant. In regard to this point Counsel cited two cases, 72 N. L. R. 333¹ and 74 N. L. R. 62² where there was a difference of opinion as to whether a tenant was liable to be ejected, if he had paid the rent which was due at the time of the action, even though he was in arrears of rent at the time notice was issued. I prefer to take the view expressed by Panditha-Gunawardane, J. in the case of *K. B. Samarakoon v. P. V. G. Gunadasa* 74 N. L. R. 62 in which it was held that the material point of time at which arrears should be decided is the time the cause of action arose. I therefore hold that the defendant

¹ (1969) 72 N. L. R. 333.

² (1970) 74 N. L. R. 62.

in this case was in arrears of rent at the time the cause of action arose and that he is therefore liable to be ejected. Another complaint made by the Counsel for the Appellant was that the learned Commissioner had proceeded on a basis that was not taken up either by the plaintiff or the defendant at the trial. I am unable to agree with this contention. In any event, on the issues framed, the admission made by Counsel for the defendant and the evidence available, I am unable to say that the finding that the learned Commissioner arrived at was wrong.

Counsel for the Respondent has drawn my attention to a Revision application filed by the Appellant on the 10th of February 1970, in which he made a complaint against the writ of possession issued by the Commissioner of Requests in this case and prayed that the writ issued be recalled and that the defendant be restored to possession of the premises in suit pending the hearing and determination of the appeal filed by him. The petition makes it clear that the defendant had been ejected from these premises on the 17th September 1969, about 2 years ago, and Counsel for the Appellant has not sought to support this application today, even though the Revision papers came up before this Court earlier and were ordered to be taken up along with this case. He did not desire to support this application, and the revision application will therefore stand dismissed.

For the reasons stated by me, the appeal itself is dismissed with costs.

Appeal dismissed.

