

1920.

Present : Shaw J.

UMMA *et al.* v. ARUMUGAM.

354—C. R. Colombo, 70,462.

Lease—Provision that lease should terminate if Government ordered rice business to be removed to a Government stores—Action for rent—Evidence Ordinance, s. 92.

Plaintiff leased to defendant a boutique used as a rice boutique : at that time Government intended to concentrate the small rice businesses into a Government controlled spot for the purpose of prevention of plague. . . . Consequently the following provision was inserted : " That if all the rice boutiques were to be ordered to be shifted to Government granary stores at Colombo during the term of this lease, this lease shall be considered null and void."

The defendant was ordered by Government to remove his business to the Manning Market. This order was made, not for the purpose of the prevention of plague, but for the purpose of controlling the sale of rice in view of the rice shortage.

Held, that the defendant was not liable to pay rent after the removal of the business to the Manning Market.

THE facts appear from the judgment.

Cooray (with him *S. V. Jayewickreme*), for defendant, appellant.—The lease definitely provides for a cancellation in case the sale of rice in the premises is prohibited. It is clear to what use the premises were to be put. If Government control of the rice trade prevented such use, the defendant was entitled to terminate the lease. The circumstances which necessitated such control are immaterial.

A. St. V. Jayawardene (with him *Croos-Dabrera*), for plaintiffs, respondents.—There is nothing in the deed of lease to show to what use the premises were to be put. Section 92 of the Evidence Ordinance does not permit oral evidence to be led to prove this. (*Canthiah v. Muttiah Chetty*.¹) The provision in the lease was that

¹ (1915) 18 N. L. R. 264.

it was to be null and void if the rice boutiques were shifted to the Government granary stores. As a matter of fact, the rice business has been ordered to be removed to a place not contemplated by the parties, viz., Manning Market. The Manning Market is not a rice store, and cannot be said to come under the term "Government granary stores."

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June 25, 1920. SHAW J.—

In this case the plaintiff claimed three months' rent of a certain boutique in Gabo's lane, Colombo, under a deed of lease of June 11, 1917. The Commissioner has given judgment in favour of the plaintiffs, and the defendant appeals. The lease was a lease of a boutique which was at the time of the lease used as a rice boutique, and the lease was for three years from June 11, 1917. At the time that the lease was granted it appears to have been in the contemplation of the parties that the Government might prohibit the sale of rice in private boutiques, the idea being that Government intended to concentrate the small rice businesses into a Government controlled spot for the purpose of prevention of plague. Consequently, a provision was inserted in the lease intending to provide that the lease should come to an end if the Government directed the rice boutiques to be closed and the business to be transferred to a Government controlled spot. The provision is as follows: "That if all the rice boutiques along with the said premises situated at 2nd Gabo's lane were to be ordered to be shifted to Government granary stores at Colombo during the term of this lease, this lease shall be considered null and void."

Perhaps this is not a very well worded provision, but it is one which can be well understood when its purpose is considered. The defendant remained in occupation of the boutique, using it as a rice store, until early in the year 1919. At that time they were directed to remove their business to a place built by the Government called the Manning Market, and they accordingly so removed it, and after April, 1919, no rice has been sold by the defendant at the premises leased or anywhere other than at the Manning Market. They gave notice to the plaintiffs of what had happened, and that they should no longer require the use of the boutique under the lease, and at the end of June they quitted possession, and the key was offered back to the second plaintiff. I am not sure that it was actually left in his possession, but that does not appear to me to be material. The claim in the action is for rent for the months of May, June, and July, 1919. The defendant now admits that he owes the rent up to the end of June, when he returned the key, but denies that he is liable for rent of the premises subsequent to that date. The Commissioner has based his judgment mainly on the ground that although the Manning Market was built for the purpose of plague, the order under which the defendant's business was removed

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was not made for the purpose of prevention of plague, but was made in consequence of the shortage of rice, in consequence of which it was thought desirable by the Government and the Municipality that all sales of rice should be under the control and supervision of the Government authorities. The Commissioner, therefore, thought that the order for the removal of the business was not such an order as was contemplated by the provision in the lease, and that the Manning Market was not a Government store within the meaning of that provision. I am unable to agree with the decision of the Commissioner. It is proved in evidence, and indeed admitted, that the Manning Market was built by the Government for the very purpose which the parties had in contemplation when the provision was inserted in the lease, and for the purpose of bringing into one place all the dealers in rice. It does not appear to me to matter what was the object which the parties thought Government had in view at the time that they inserted this provision. What they provided for was any removal of the business to a Government store under the orders from the authorities, and that is what has taken place in this case. It may be that had the present shortage of rice not arisen, the collection of the businesses in the Manning Market and the order upon the defendant to remove his business there, might not have been given at so early a date. Apparently, the Manning Market was incomplete at the time the defendant was directed to remove his business, and had it not been for the rice shortage, the boutique in Gabo's lane might have been allowed to be occupied as boutiques for a time longer, but that does not appear to me to have any bearing upon the case. The Commissioner also is of opinion that the Manning Market is not a "store" within the meaning of the provision, and, therefore, the business has not been ordered to be shifted to a Government store, and he thinks that the only building to which the section can refer is the Chalmers Granaries. Such a construction of the provision would reduce it to an absurdity, because the provision is referring to some place under the control of Government to which it was thought the defendant might be directed to remove his business. Obviously, this could not be a store in the sense of the Chalmers Granaries, but it directly points to some Government building, such as the Manning Market, which has been built for the purpose of collecting the small rice businesses. The appeal must, therefore, succeed, and the judgment of the Commissioner must be varied. The plaintiffs are entitled to the rent for the months of May and June, amounting to Rs. 100, less a sum of Rs. 35·38 which is admittedly due from the plaintiffs to the defendant for rice supplied. The judgment for the plaintiffs will, therefore, be for Rs. 64·62 and costs on that scale. The appellant is entitled to the costs of this appeal.

Appeal allowed.