

1953

*Present : Gratiaen J.*

S. DEERASOORIYA, Appellant, and C. L. MASILAMANY,  
Respondent

*S. C. 93—C. R. Colombo, 31,117*

*Rent Restriction Act, No. 29 of 1948—Alternative accommodation—Can it be provided by altering substantially the structural identity of the protected premises?—Section 13, sub-sections 1, proviso (c), and 3.*

A landlord sued his tenant for ejection on the ground that he "reasonably required" the leased premises for the purposes of his petroleum agency business. The trial Court passed a decree in favour of the landlord whereby (a) the landlord was to be restored to possession of a substantial portion of the premises which would suffice for the purpose of the landlord's business, and (b) the tenant should be allowed to remain in possession, at a reduced monthly rental to be subsequently determined, of the rest of the premises which, in the opinion of the Court, would (but only after certain necessary structural alterations had been effected) meet the requirements of the tenant's business as a timber merchant which was being carried on in the premises.

<sup>1</sup> *Government Gazette 9,228 of 21.1.44.*

*Held*, that the decree was quite inappropriate for the reasons (a) that it would admittedly be impossible to provide the tenant with the suggested alternative accommodation until certain substantial alterations were first completed, (b) that it was demonstrably impracticable to afford the necessary protection to the tenant's business interests during the interval of time.

*Held further*, that a landlord who is restored to possession of his premises on the ground that he reasonably requires them is not entitled substantially to alter the structural identity of the protected premises before the period of time fixed by section 13 (3) of the Rent Restriction Act has elapsed.

**A**PPEAL from a judgment of the Court of Requests, Colombo.

*H. V. Perera, Q.C.*, with *H. W. Jayewardene, M. I. M. Haniffa* and *D. R. P. Goonetilleke*, for the defendant appellant.

*E. B. Wikramanayake, Q.C.*, with *J. N. Fernandopulle* and *E. B. Vannitamby*, for the plaintiff respondent.

*Cur. adv. vult.*

July 13, 1953. GRATIAEN J.—

This action relates to certain premises in Colombo to which the provisions of the Rent Restriction Act No. 29 of 1948 are applicable. The tenant is a timber merchant and contractor who has during the past ten years established and progressively improved a lucrative business on the premises. The landlord is a petroleum agent associated with the Shell Company of Ceylon, and carries on his activities in another part of the city. He has sued the defendant for a decree of ejection on the ground that the premises are "reasonably required for the purposes of his business" within the meaning of the third proviso to sec. 13 (1) of the Act.

The landlord's claim, in effect, is that he could improve his agency business considerably by transferring it to the premises now occupied by his tenant. In that event, he says, he would arrange to lease the premises to the Shell Company for a term of years; and the Company would, *qua* lessee, after demolishing the existing buildings of the timber business and setting up in their place a modern petrol installation at its own expense, continue to employ him on the new premises as its selling agent on far more favourable terms. He points out that, by way of contrast, his profits under existing conditions remain stationary at about Rs. 700 per mensem.

The learned Commissioner was satisfied upon the evidence that the landlord would in fact gain material pecuniary advantage if this project could be carried out. It is implicit, however, in other parts of the judgment under appeal that a decree for ejection would nevertheless lack the essential element of "reasonableness" unless the tenant were at the same time provided with suitable alternative accommodation from which he could conveniently carry on his long established timber business. After an examination of the problem from this angle, the learned Commissioner passed a decree in favour of the landlord whereby (a) the landlord was to be restored to possession of a substantial portion of the premises which would suffice for the erection of a modern petrol installation, and

(b) the tenant should be allowed to remain in possession, at a reduced monthly rental to be subsequently determined, of the rest of the premises which, in the Commissioner's opinion, would (but only after certain necessary structural alterations had been effected) meet the requirements of the timber business. I shall assume, although I am not at all convinced, that this new arrangement would ultimately prove satisfactory.

It is sought to justify this form of decree on the analogy of the decision of the Court of Appeal in England in *Parmee v. Mitchell*<sup>1</sup>. If a decree for ejectment is to be passed at all in favour of a landlord, the order for possession must, as a matter of form, extend to the entire premises, "for that is the only way in which the tenant's interest can be effectively determined". In *Parmee's case* the tenant actually occupied only a portion of the premises which was sufficient for his own requirements, and had accordingly sub-let the remaining portion to someone else. The Court of Appeal held that the tenant was reasonably entitled only to be protected in his continued occupation of the portion which he in fact occupied, and therefore approved of a decree whereby the landlord was to be restored to possession of the entire property, "but subject to a proviso that the tenant was to remain in occupation of the part of the premises actually occupied by him at an agreed rental".

I do not doubt that, notwithstanding the differences which exist between the English Act and the local Act, a decree in the form approved in *Parmee's case* may be justified in appropriate cases in Ceylon. But such a decree is quite inappropriate to the facts of the present case, because :

- (a) it would admittedly be impossible to provide the tenant with the suggested alternative accommodation until certain substantial structural alterations have first been completed ;
- (b) it is demonstrably impracticable to afford the necessary protection to the tenant's business interests during this interval of time.

I therefore do not see how in the present case the decree passed by the learned Commissioner can be modified so as to take the form of the decree in *Parmee's case*.

There is a further difficulty which is fatal to the decree under appeal. A landlord who is restored to possession of his premises on the ground specified in the third proviso to sec. 13 (1) of the Rent Restriction Act, No. 29 of 1948, is not entitled substantially to alter the structural identity of the protected premises before the period of time fixed by sec. 13 (3) has elapsed. If, for instance, a landlord, having regained possession of the premises for his own use, subsequently vacates them without reasonable cause within one year, the tenant is entitled as of right to be restored to possession. It is therefore essential that, in such an eventuality, the premises should throughout this period of extended protection continue to be suitable for the tenant's enjoyment in the same manner and for the same purposes as had obtained prior to the original decree for ejectment. It is only subject to this important qualification that I agree that there can be no objection to alterations being effected by the landlord to suit his own needs.

<sup>1</sup> (1950) 2. K. B. 199.

*Ariyaratne v. Silva* <sup>1</sup>. In the present case, the scheme of demolition and reconstruction contemplated by the landlord would necessarily destroy the tenant's protection should the need for resorting to sec. 13 (3) arise subsequently. Indeed, the scheme is specially designed to place the Shell Company, *qua* lessee, in immediate occupation of that part of the premises on which the petrol installation is to be established. The moment that occurs, a breach of sec. 13 (3) is automatically committed. No alterations to the premises can therefore be justified which would render the premises unsuitable for the revival of the activities of the present tenant's business as a timber merchant.

Even if one gives full effect to the considerations which weighed with the learned Commissioner, the landlord's claim to eject his tenant is unreasonable, and the decree under appeal cannot be supported either in law or upon the merits of the case. I therefore set aside the judgment and dismiss the action with costs in both Courts.

*Appeal allowed.*

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