

1961

Present : T. S. Fernando, J.

H. J. ARON SINGHO, Appellant, and K. A. SAMUEL SILVA,
Respondent

S. C. 167—C. R. Colombo, 72682

Rent Restriction Act, No. 29 of 1948, s. 13 (1)—Unregistered notarial lease—Subsequent sale of leased premises—Due registration of deed of sale—Right of lessee to continue as tenant.

A lessee can plead the benefit of the Rent Restriction Act where the premises in question are occupied by him under a notarial lease which has terminated by effluxion of time.

A sale of certain premises prevailed over an earlier unregistered lease of the property by reason of due registration. After he bought the premises from the lessor, the vendee gave notice to quit to the lessee requiring him to deliver possession of the premises on the expiry of the lease.

Held, that on the expiry of the lease the lessee was entitled to claim the protection of section 13 (1) of the Rent Restriction Act.

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

D. R. P. Goonetilleke, for the defendant-appellant.

H. W. Jayewardene, Q.C., with *B. J. Fernando*, for the plaintiff-respondent.

Cur. adv. vult.

March 29, 1961. T. S. FERNANDO, J.—

This action was instituted by the plaintiff claiming the ejectment of the defendant from certain premises which have been purchased by him from the owners on transfer P.1 executed on 18th September 1958. At the time of such purchase by the plaintiff the premises were occupied by the defendant and there is no dispute between the parties that the defendant had been placed in occupation by the owners who had executed a notarially attested lease for three years commencing from 1st January 1956 to 31st December 1958 and acknowledging the receipt by them of rent for the premises for the full period of three years in advance. This lease had at no time been registered, and on the authority of *Sennaiya Chetty v. Rupesinghe Appuhamy*¹ and *Singho Appuhamy v. Amaratunge*² the transfer P. 1 prevails over the unregistered lease. The plaintiff, however, through his proctor, about two months after his purchase, viz. on 14th November 1958, addressed letter D.1 to the defendant giving him “notice to quit and deliver quiet and peaceful possession of premises No. 98 occupied by you on the 31st day of December 1958 on the expiry of the lease.” The defendant failed to quit the premises by the 31st of December 1958 and the present suit resulted.

¹ (1885) 7 S. C. C. 111.

² (1922) 1 Times 110.

The learned Commissioner of Requests, purporting to apply the decision of this Court in *Hinniappuhamy v. Kumarasingha*¹ reached the conclusion that on the date of purchase by the plaintiff, viz. on 18th September 1958, the defendant became a trespasser *vis-a-vis* the plaintiff. In regard to the letter D.1, the Commissioner took the view that it was not an indication of a recognition of the unregistered lease but that it went to show that the plaintiff was indulgent enough to allow the defendant to remain until 31st December 1958 as sudden eviction might work hardship on the latter. If the defendant had in law become a trespasser *vis-a-vis* the plaintiff, the latter was under no legal obligation to give the defendant any notice to quit before instituting proceedings in ejectment. De Sampayo J. in the course of his judgment in *Wijesinghe v. Charles*² observes :—“ It is clear that a purchaser in this connection has two courses open to him when a third party is in possession of the property at the time of the sale : he may either stand on the strength of the title and sue the third party in ejectment, or he may at once bring the action *ex empto* against his vendor for failure to implement the sale by delivery of possession. ” In the case before me it is obvious that the plaintiff had not elected to proceed against his vendor. In that situation how did the plaintiff come to refer to the lease at all in the letter D. 1 ? It was contended on his behalf in the lower Court that he was unaware of any lease by the vendor and that it was unlikely that he would ever have made the purchase had he known of this lease. As against this contention it must be observed that any reasonable purchaser of residential property could be expected to have addressed his mind to the question of vacant possession of the premises and the implications arising from the operation of the Rent Restriction Act. An interpretation of the letter D. 1 must have regard to the probability I have referred to above, and I am of opinion that when the plaintiff referred in letter D. 1 expressly to the lease and indicated that possession may be retained till 31st December 1958 he was recognising the lease granted by his vendor. A lessee can plead the benefit of the Rent Restriction Act where the premises are occupied by him under a notarial lease which has terminated by effluxion of time—*Guneratne v. Thelenis*³. In view of the opinion which I have reached in regard to the interpretation of the letter D. 1, the plaintiff's action is barred by reason of Section 13 (1) of the Rent Restriction Act, No. 29 of 1948. In this situation it does not appear to me to be necessary, sitting alone, to discuss arguments raised by counsel for both parties as to the conflict between the decisions in *Hinniappuhamy v. Kumarasingha* (*supra*) on the one hand and *Bandara v. Appuhamy*⁴ and *Ukkuwa v. Fernando*⁵ on the other.

It is important to realise, said Gratiaen J. in *Britto v. Heenatigala*⁶, that Section 13 of the Act (No. 29 of 1948) operates “ notwithstanding anything in any other law ”. This means that the “ tenant ” is protected even though his contractual rights may have been terminated (e.g. by due notice or by effluxion of time) or extinguished by operation of law. Giving

¹ (1957) 59 N. L. R. 566.

² (1915) 18 N. L. R. 169.

³ (1946) 47 N. L. R. 433.

⁴ (1923) 25 N. L. R. 176.

⁵ (1936) 38 N. L. R. 125.

⁶ (1956) 57 N. L. R. 329.

effect to Section 13 of the Rent Restriction Act, I hold that the present action was not competent and should have been dismissed with costs. The appeal is, therefore, allowed, and the plaintiff's action is dismissed with costs in both courts.

I am unable to agree with Mr. Jayewardene that a decision in this case adverse to the plaintiff causes him undue hardship. His position would have been the same if the defendant had been an ordinary monthly tenant. The fact that the defendant was the holder of notarial lease—albeit unregistered—which was due to expire only some three and a half months after the date of the purchase cannot surely make the defendant's claim to retain occupation any less deserving than that of a tenant from month to month.

Appeal allowed.
