

1966 Present : H. N. G. Fernando, S.P.J., and Manicavasagar, J.

Mrs. W. I. S. FERNANDO and another, Appellants, and H. M. DE SILVA, Respondent

S. C. 429/64—D. C. Colombo, 10220/L

Landlord and tenant—Monthly tenancy—Death of landlord—Resulting position.

The death of the landlord does not terminate a contract of monthly tenancy ; his rights and obligations pass then to his heirs. In such a case, the heirs are not entitled to seek ejectment of the tenant without prior notice to quit.

APPEAL from a judgment of the District Court, Colombo.

C. Ranganathan, Q.C., with *D. C. Amerasinghe*, for the plaintiffs-appellants.

G. T. Samerawickreme, Q.C., with *S. W. Walpita*, for the defendant-respondent.

Cur. adv. vult.

October 25, 1966. MANICAVASAGAR, J.—

The issue which we have to determine in this appeal is whether the death of the landlord terminates a contract of monthly tenancy.

The plaintiffs who are the heirs of the deceased landlord seek the ejectment of the tenant, on the basis that the contract was terminated by his death.

The learned District Judge dismissed the plaintiffs' action, and counsel for the appellants submits that his decision is wrong. His contention is that a monthly tenancy is terminated on the death of either of the contracting parties. In making this submission he relied on the opinion of Chief Justice Basnayake (Pulle J. agreeing) in the case of *Abdul Hafeel et al. v. Muthu Bathool*¹ that a monthly tenancy is terminated on the death of the tenant, and his rights and obligations do not pass to his heirs. The learned Chief Justice citing passages from Roman Dutch Law texts said a monthly tenancy is a contract for a period not exceeding a month, and it expires on the last day of the month, but is tacitly renewed on the first day of each month by the silence and conduct of the parties.

The citations from Voet (Book xix. 2. 9 and 10) and the *Censura Forensis* (iv. xxii. 14) to which reference is made in the judgment are, in my view, referable only to the case of a lease for a definite period—and not to a periodic tenancy—when after the expiry of the period of the

¹ (1957) 58 N. L. R. 409.

lease, the lessee continues in the enjoyment of that which was let, and the lessor permits him to do so. Pothier says, quoting from the Digest (19. 2. 14)—

“Relocation is a contract of letting and hiring presumed to have been tacitly entered into by the lessor and the lessee when, after the expiry of the period of a previous lease, the lessee has continued in the enjoyment of the thing, and the lessor has permitted him to do so. This relocation is therefore not a continuation of the previous lease, but a new lease, created by a new and tacit agreement between the parties, following upon the previous one”. (Sec. 342 Contract of Letting and Hiring. 1953 edition)

With respect. I do not agree that a monthly tenancy terminates at the end of the month, nor with the view that it is tacitly renewed from month to month. A monthly tenancy is a periodic tenancy: it is a tenancy which *by agreement* between the contracting parties runs from month to month, and *is terminated by a month's notice*. Wille says,

“The essence of a periodic tenancy is, under the common law, that it continues for successive periods *until it is terminated by notice, given by either party*.” (Landlord and Tenant, page 45., 5th edition)

The termination of a monthly tenancy is by reasonable notice, unlike a tenancy for a definite period which ends with the efflux of time, unless it is dissolved before expiry by operation of law.

The answer to the problem before us lies elsewhere. There being no statutory provision which provides a solution, recourse must be had to the common law. The principle applicable to this question is expressed in these words by Pothier—

“A lease is not dissolved by the death of one of the parties: but, in accordance with a rule common to all contracts, the rights and obligations arising from the lease pass to the person of his heirs, or to that of his *vacua successio*.” (Sec. 317)

He gives two exceptions to this general rule, which is accepted by the writers on Roman-Dutch Law, that

- (1) where the lessor's title was one for his life only, such as a fiduciary interest or life usufruct, the death of lessor terminates the lease, and
- (2) where the lease is at the will of the lessor, or lessee, death of the lessor, or the lessee, as the case may be, terminates the lease.

There is also unanimity for the view that where the lease is for a definite time, the death of either party during the continuance of the lease, does not terminate the lease, and the estate is bound by the lease, except where the lessor's title is limited to his life.

What then is the answer to the issue in this case? A periodic lease does not come within the exceptions in the texts : it is terminated by notice by either party : where the contract, by agreement of the parties, runs from month to month, and has not been terminated by reasonable notice, the death of the landlord does not extinguish the contract, but his rights and obligations pass to his heirs ; in the instant case the tenancy has not been terminated by the plaintiffs.

The plaintiffs' action was rightly dismissed, and this appeal fails.

I have not considered, as I do not think it necessary to do so in view of the decision I have reached, whether the tenant of rent-controlled premises is entitled to the protection of the Rent Act, even if the contract had been terminated by the heirs : and the larger question, whether a monthly tenant, assuming Chief Justice Basnayake's opinion is right, has protection from ejection, under the Rent Act, on the death of his landlord.

The appellant will pay the costs of appeal, and of the original Court.

H. N. G. FERNANDO, S.P.J.—I agree.

Appeal dismissed.

