

1968

Present: Pandita-Gunawardene, J.

M. I. M. THAHA, Appellant, and M. M. SADEEN, Respondent

S. C. 40/67—C. R. Colombo, 86538/R. E.

Rent controlled premises—Sub-letting—Subsequent sale of the premises by landlord—Right of purchaser to have the tenant and sub-tenant ejected—Rent Restriction Act (Cap. 274), ss. 9 (2), 27.

Where a tenant of rent-controlled premises sub-lets the premises in contravention of section 9 (2) of the Rent Restriction Act and the premises are subsequently sold by the landlord to a third party, the purchaser, to whom the tenant has attorned, is entitled to maintain an action for the ejection of the tenant and the sub-tenant.

Ratnasingham v. Catheraswamy (58 N. L. R. 476) followed.

Wallace v. Silva (70 N. L. R. 308) not followed.

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

C. Ranganathan, Q.C., with *A. Sivagurunathan*, for the 2nd defendant-appellant.

C. Thiagalilingam, Q.C., with *M. S. M. Nazeem*, for the plaintiff-respondent.

Cur. adv. vult.

September 26, 1968. PANDITA-GUNAWARDENE, J.—

The plaintiff, who is the respondent to this appeal, became owner of the premises in suit by purchase in 1961. The first defendant who was the tenant, attorned to the plaintiff and thereby continued in his tenancy.

In November, 1963 the plaintiff commenced action against the first defendant; stating *inter alia* (a) that the first defendant—he was the only defendant to the original plaint—was in arrears of rent within the meaning of the Rent Restriction Act and (b) that he had sub-let the premises without prior consent. The prayer was for an order of ejection against the defendant and those holding under him. Thereafter the alleged sub-tenant, who is the second defendant in this case, was added as a party. And in December, 1964 amended plaint was filed against both defendants, seeking their eviction on the ground of arrears of rent and on the ground of sub-tenancy in favour of the second defendant. The first defendant filed no answer and did not resist the plaintiff's claim. The second defendant, who is the appellant in this case, filed answer in which he asserted that he, the second defendant, was in occupation, not

as sub-tenant but that in truth and in fact he was the lawful tenant; that he was the tenant of the plaintiff's predecessor in title and thereafter by attornment and/or by operation of law, became the rightful tenant of the plaintiff as from 1961.

Apparently in the year 1959, the first defendant tenant had entered into an agreement with the second defendant whereby he let to the second defendant the business called "Old Metal Stores" carried on in the premises in suit at a monthly rental of Rs. 30. The second defendant defaulted in the payment of the rental and in 1962, the first defendant filed action against him for ejection from the premises. In his answer to that plaint, the second defendant admitted that he was a sub-tenant of the first defendant (the plaintiff in that case) which position he has significantly abandoned in this case: and further went on to aver that as from October, 1960 the sub-tenancy turned into a tenancy (Vide P 28). The case did not proceed to trial as the first defendant agreed to his action being dismissed in view of the fact that the business name had not been properly registered.

The learned Commissioner of Requests has considered the documentary and oral evidence in this case and has in my view, correctly found against the second defendant. I see no reason to interfere with his finding.

Mr. Ranganathan for the second defendant however contended that the plaintiff cannot maintain this action for ejection on the ground of sub-letting as the act of sub-letting was done when he was not the landlord. He strongly relied on the judgment in the case of *Bertha Wallace v. D. V. Hector Silva*¹ where Sirimane, J. held "where a tenant sub-lets rent controlled premises without the permission of his landlord, a person who subsequently purchases the premises from the landlord is not entitled to eject the tenant on the ground of sub-letting which had been done when he was not the landlord". I would, with respect, disagree with the view expressed by Sirimane, J. I would prefer to follow the judgment in the case of *Ratnasingham and another v. Cathereswamy*² where Basnayake, C.J. (K. D. de Silva, J. agreeing) in similar circumstances, decided in favour of the plaintiff landlord.

Section 9 (1 and 2) of the Rent Restriction Act, Cap. 274, Volume 10, L. E. C., provide :

- (1) Notwithstanding anything in any other law, but subject to any provision to the contrary in any written contract or agreement, the tenant of any premises to which this Act applies shall not, without the prior consent in writing of the landlord, sub-let the premises or any part thereof to any other person.

¹ (1968) 70 N. L. R. 308.

² (1956) 58 N. L. R. 476.

- (2) Where any premises or any part thereof is sub-let in contravention of the provisions of sub-section (1), the landlord shall, notwithstanding the provisions of section 13, be entitled in an action instituted in a court of competent jurisdiction to a decree for the ejection from the premises of his tenant and of the person or each of the persons to whom the premises or any part thereof has been so sub-let.

The word 'landlord' is defined in Section 27 of the Act as meaning the person who in relation to any premises is, at the time-being, entitled to receive the rent of such premises.

It would seem to me that it is necessary to consider Section 9 of the Act realistically and not in a technical and narrow sense. It is correct to say that the act of sub-letting it is that gives rise to the cause of action. But to hold that if a sub-letting is done on a particular day, therefore the cause of action can only arise to the landlord who on that particular day was the landlord of the premises, is, I think, not in accord with a common sense approach to the situation. Sub-letting without consent, as can well be imagined, is unlike letting. It is done by the tenant in stealth, for his profit. The landlord may, in the generality of cases, never know whether his premises are sub-let. Proof of sub-letting is in the circumstances, invariably difficult to obtain, and if in addition, it is required that the landlord should establish the date of sub-letting, it will be casting on the landlord a well nigh impossible burden. My interpretation of this Section is that at whatever time it is discovered that the premises have been sub-let, then on that discovery the cause of action arises. What the Section implies is that at the time of commencing action, the sub-letting should subsist; there should be in existence, a sub-tenant in the premises.

The general purport of the Rent Restriction Act is to afford protection to the honest tenant. But to construe the Act in a manner that may assist a dishonest tenant would be to deny to the landlord the modicum of rights available to him under the Act.

I would affirm the judgment of the learned Commissioner of Requests and dismiss the appeal with costs.

Appeal dismissed.
