

1948

Present : Basnayake J.

HASSANALLY, Appellant, and JAYARATNE, Respondent

*S. C. 133—C. R. Colombo, 2,552**Rent Restriction Ordinance—Premises required for trade or business—Landlord has other partners in business—Not entitled to eject defendant—Ordinance 60 of 1942, Section 8 (c).*

The trade or business contemplated in section 8 (c) of the Rent Restriction Ordinance is a trade or business carried on by the landlord or landlords alone and not a business in which there are other partners along with such landlord or landlords.

APPPEAL from a judgment of the Commissioner of Requests, Colombo.

F. A. Hayley, K.C., with *H. A. Kottegoda*, for plaintiff, appellant.

J. R. V. Ferdinands, with *Victor Joseph*, for defendant, respondent.

Cur. adv. vult.

December 21, 1948. BASNAYAKE J.—

The plaintiff-appellant (hereinafter referred to as the plaintiff), one Ebramjee Hassanally, is a merchant carrying on, in partnership with his four brothers and three sons, a wholesale and retail business in imported goods such as glassware, stationery, cutlery, &c., at No. 195, Prince Street, Colombo, under the name of Hassanally & Sons. The defendant-respondent (hereinafter referred to as the defendant) is also a merchant carrying on business at No. 85, 4th Cross Street, and No. 234, Gas Works Street, Colombo. The plaintiff and his three sons own No. 85, 4th Cross Street and No. 195, Prince Street. The defendant as stated in his answer occupies only a portion of No. 85 in extent 12 ft. by 16 ft. That portion, the plaintiff asserts, is required for the expansion of the partnership business of Hassanally & Sons. The plaintiff's sons, in addition to being partners in the firm of Hassanally & Sons, own separate businesses. His son Abdul Hussain has a separate business at Kandy, under the name of Abdul Hussein Ebrahimjee, and another business at No. 10, Dam Street, and is also a director of the limited liability business in radio and electrical goods carried on by his two brothers at 3rd Cross Street, Colombo.

The following notice dated 30th April 1946, terminating his tenancy, was sent by Proctor Kanagarajah to the defendant.

“ Under instructions from Mr. Ebramjee Hassanally of 4th Cross Street, Colombo, I hereby give you notice to quit the premises No. 85, 4th Cross Street, Colombo, now occupied by you as his monthly tenant and to deliver possession of same to my client on the 31st day of May, 1946, as he requires the premises for his own use and that of his sons.

“ In the event of your failure to do so an action will be instituted to eject you from the said premises with damages at Rs. 35 per month from the 1st day of June, 1946, until my client is placed in possession.”

Although the notice purports to be on the instructions of the plaintiff, his son Abdul Hussein admits that it was he who instructed the proctor. As the defendant failed to vacate the premises these proceedings were instituted against him by plaint dated 3rd July, 1946. The reason for seeking to have the defendant ejected therefrom is thus stated therein :

“ On the 30th day of April, 1946, the plaintiff gave the defendant due notice in writing requiring him to quit and deliver possession of the said property and premises on or before the 31st day of May, 1946, as the plaintiff required the premises for his own use and of his sons.”

In the amended plaint dated 9th October, 1946, it is stated that the premises are required for the plaintiff's own use and of his sons in connection with their business or trade.

It is significant that although the plaintiff appears to have been present in Court on the day of trial he did not give evidence, but remained in the background and sought to prove his case, through his son. There is therefore no sworn testimony from the plaintiff himself that he requires the premises. The son says : “ On the 30th of April, 1946, we gave the defendant notice to quit at the end of May, 1946. The notice was handed over at Gas Works Street by my younger brother Before notice to quit was given to the defendant I had spoken to the defendant and told him that we wanted these premises for our own business.”

The learned Commissioner of Requests dismissed the plaintiff's action on the ground that they were not reasonably required by him for his business and that due notice was not given by him to the defendant. I am not satisfied that the learned Commissioner is wrong. The premises are required for the partnership business of the plaintiff, his brothers and his sons. The plaintiff is neither the sole owner of the premises nor the sole owner of the business for the purpose of which he alleges he requires them. In the circumstances, the notice is bad, for in the case of joint landlords notice of the termination of a tenancy must be given by each of them¹. As there is no evidence that the plaintiff let the premises as sole landlord, he is not entitled to maintain this action as at present constituted, for it is not open to one of four joint landlords to sue their tenant in ejectment². It appears from the evidence that the sons also regarded themselves as landlords. Receipt D 1 is signed by one of the

¹ *Parker and Parker v. Knox*, 1947 (2) S. A. L. R. 1190.

² *Decharms v. Horwood*, 10 Bing. 526 ; 4 M. & Scot 400.
Tiffany—Landlord & Tenant—Vol. 2, p. 1831.

plaintiff's sons. D 2, another receipt, is signed by his son Abdul Hussein, while D 3, the receipt for May, 1944, is stamped with the seal of the partnership, Ebrahimjee Hassenally, and signed by his youngest son.

Section 8 (c) of the Rent Restriction Ordinance permits the institution of an action for ejection of a tenant of any premises without the authorisation of the Board in a case where the premises are, in the opinion of the court, reasonably required for the purposes of the landlord's trade, business, &c. Where a house is owned by more persons than one, the expression landlord in that section should I think be read as including the plural¹. Although, so far as I am aware, the question has not been decided by this Court, there are decisions of the English Courts² which hold that in an Act containing the words³ "the dwelling-house is reasonably required by the landlord . . . for occupation as a residence for—(a) himself", the word "landlord" can be read as including more than one person where there is more than one legally entitled to be landlord. But as Asquith L.J. observed in *Baker v. Lewis*⁴ :

"Where there are two or more joint beneficial owners, (i), (ii), and (iii) of (h) should, I think, be read as follows: in (i) for 'himself' read 'themselves', in (ii) for 'any son or daughter of his' read 'any son or daughter of theirs', and in (iii) read 'their father or mother'. Where, read in this way, neither (i), (ii), nor (iii) has any application, such beneficial owners would fail, for instance, if they proceed under (ii) and are not a married couple with a child, or if they proceed under (iii) and have not got a parent in common; but they would fail in that case not because there are several of them or because they are not a 'landlord' within the opening words of the section, but because they could not bring themselves within the language of (i), (ii), or (iii), construed in the way I suggest."

In the case of *McIntyre v. Hardcastle*⁵, Tucker L.J. in adopting with approval the view of Asquith L.J. says :

"I feel convinced that the interpretation put on it by Asquith L.J. was the correct one and I do not desire to attempt to put into better language that which he so clearly expressed in the judgment which I have just read."

In the instant case, as I said before, the premises are required for the business of the partnership of which not only those who are landlords are partners but also others. In such a case I do not think it can be said that the premises are required for the purposes of the trade or business of the landlords. The trade or business contemplated in section 8 (c) of the Ordinance is in my view the trade or business carried on by the landlords alone, and not a business of which they are partners along with others.

For the above reason the appeal is dismissed with costs.

Appeal dismissed.

¹ Section 2 (x) of the Interpretation Ordinance.

² *Baker v. Lewis*, (1946) 2 All E. R. 592 at 595 (a case of two sisters).

³ *Owen v. Overy*, decided on 25.10.46, unreported (a case of husband and wife).

⁴ Schedule 1, paragraph (h), Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, Section 3 (1).

⁵ (1946) 2 All E. R. 592.

⁶ (1948) 1 All E. R. 698 at 699.