

1951

Present: Basnayake J.

WIMALASURIYA, Appellant, and PONNIAH, Respondent

*S. C. 167—C. R. Gampola, 8,471**Rent Restriction Act—Sub-section of premises—Right of landlord to sue tenant without giving notice—Act No. 29 of 1948, Section 9 (2).*

Where a tenant sub-lets the leased premises in contravention of section 9 of the Rent Restriction Act, No. 29 of 1948, the landlord is entitled to institute proceedings in ejectment without terminating the tenancy by notice.

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

H. W. Jayewardene, with *D. R. P. Goonetilleke*, for the plaintiff appellant.

Vernon Wijetunge, for the defendant respondent.

Cur. adv. vult.

January 24, 1951. BASNAYAKE J.—

This is an appeal by the plaintiff in an action for ejectment of the defendant from premises No. 69, Malabar Street, Gampola. The plaintiff alleges that the defendant in contravention of section 9 of the Rent Restriction Act, No. 29 of 1948, sub-let the premises, and he claims the right to eject the defendant by virtue of section 9 (2) of that Act.

The action was fought on the ground that the plaintiff has not terminated the contract of tenancy by giving the requisite notice and that he is not entitled to institute proceedings in ejectment under section 9 without first terminating the contract.

The learned Commissioner has upheld the objection of the defendant and dismissed the plaintiff's action.

The question that arises for consideration is whether a landlord before instituting, under the right given to him by section 9 of the Rent Restriction Act, No. 29 of 1948, an action for the ejection of a tenant who without his prior consent in writing has sub-let the leased premises or any part of it, is bound to terminate the tenancy by giving him reasonable notice according to the terms of the contract of tenancy. Learned counsel for the appellant contends that section 9 creates a new right not known to the common law and that a landlord is entitled to institute an action in ejection under that section without terminating the tenancy by notice. The relevant portion of section 9 of the Rent Restriction Act, No. 29 of 1948, reads :

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“(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.

“(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.”

Under the common law the landlord is entitled to institute proceedings in ejection against a tenant who remains in the leased property after the termination of the lease. A lease terminates either by effluxion of time or by notice of termination where a lease is terminable on notice. Where there is no express agreement to the contrary a tenant may under our law sub-let an urban tenement. The act of sub-letting by a tenant of an urban tenement does not give the landlord the right to cancel the lease and ask for possession of the premises. It cannot therefore be said that the landlord is obliged by the common law to give notice before exercising his statutory right under section 9 of the Act. Nor does the statute impose any obligation on him to give notice before proceeding thereunder. A notice of cancellation of the contract of tenancy need not under our law precede every action in ejection. A cancellation need be made only in a case where without such cancellation the landlord is not under the terms of the lease entitled to demand the surrender of the premises.

The legislature is presumed to know the law and it can safely be assumed that if it intended that notice should be given before the institution of legal proceedings under section 9 it would have provided for it by express enactment, especially as it was conferring by statute a right which the landlord does not have under the common law.

I am therefore of opinion that the present action is maintainable. The appeal is allowed with costs here and in the court below.

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Appeal allowed.