

## HANIFFA

v.

## RAZICK

SUPREME COURT,  
 ISMAIL J., WEERARATNE J. AND  
 SHARVANANDA J.,  
 SC 18/81,  
 CA 171/74(F),  
 D.C. COLOMBO 13388/L,  
 OCTOBER 7, 1981.

*Landlord and tenant – Lease of partnership business – Subletting – Ss. 10(7) and 28 of Rent Act.*

The 1st defendant Haniffa was the tenant of the premises in suit under Akbar Ali who was the owner. In 1971 Akbar Ali transferred the premises to the plaintiff who thus became the landlord. Prior to this sale the 1st defendant who was carrying on a hardware business in the premises in suit in 1970 leased the business to the 2nd defendant for two years from 1.1.1970. On the expiry of the lease, the 1st and 2nd defendants by deed entered into a partnership in respect of the business. The plaintiff's contention was that the partnership agreement regarding the hardware business was a cover for sub letting without his consent. Further the tenant had ceased to occupy the premises for more than 6 months.

**Held:**

1. Section 10(7) of the Rent Act is a bar to a suit on sub letting where the premises had been sublet prior to the date of commencement of the Rent Act (13.1.1972) so long as that person continues to be a subtenant of the premises so sub-let. The word "that person" in s. 10(7) of the Rent Act mean the sub-tenant and not the tenant.
2. Section 28 of the Rent Act *provides* for the ejection of a tenant of any *residential premises* who has ceased to occupy same for six months. This section does not apply to business premises as here.

**Cases referred to :**

1. *Wallis v. Hector Silva* (1978) 70 NLR 308
2. *Thaha v. Sadeen* (1968) 72 NLR 142
3. *Paranavithana v. Themanis* (1970) 77 NLR 185
4. *Seyed Mohamed v. Meera Pillai* (1967) 70 NLR 237
5. *Samsudeen v. Ibrahim Marikkar* S.C. 88/72 – SC minutes of 10.6.1978

Appeal from judgment of the Court of Appeal

H. L. de Silva, Senior Attorney-at-Law, with S. Mahenthiran for Defendants-Appellants.

K. N. Choksy, Senior Attorney-at-Law with Ronald Peiris for Plaintiff-Respondent.

*Cur. adv. vult.*

November 20, 1981

## SHARVANANDA, J.

The Plaintiff-Respondent instituted this action seeking to eject the Defendants-Appellants from premises No. 236, Bandaranaike Mawatha, Colombo 12, on the ground that the 1st Defendant-Appellant had without the written consent or authority of the landlord sub-let the premises in suit to the 2nd Defendant-Appellant in contravention of the provisions of the Rent Act, No. 7 of 1972. The Defendants filed answer denying the several averments in the plaint.

It is common ground that the premises in suit are governed by the provisions of the Rent Act, No. 7 of 1972, and that the premises are "business premises".

Long prior to December 1971, one Akbar Ali, who was the owner of the premises in suit, had let the premises to the 1st Defendant and the 1st Defendant was carrying on a hardware business in the premises. By deed No. 1719 dated 3rd December 1971, Akbar Ali sold and transferred the premises to the Plaintiff and the Plaintiff thus became the owner and landlord of the said premises.

By indenture of lease No. 2797 dated 5th December 1969, the 1st Defendant leased the hardware business that he was carrying on in the premises to the 2nd Defendant for a period of two years, commencing from 1st January 1970, on a monthly commission of Rs. 150/-. On the expiry of the said lease, the 1st and 2nd Defendants entered into partnership agreement No. 3194 dated 25th January 1972 to carry on the said business of hardware merchants in partnership in the premises in suit.

The contention of the Plaintiff was that the aforesaid deeds Nos. 2797 and 3194 were a cover for sub-letting of the premises by the 1st Defendant to the 2nd Defendant and that the said sub-letting of the premises was in contravention of the relevant provisions of the Rent Act of 1972, in that the written consent of the former landlord Akbar Ali or of the present landlord, namely the Plaintiff, had not been obtained.

After trial, the learned District Judge by his judgment held -

- (a) that the partnership agreement No. 3194 between the 1st and 2nd Defendants was a ruse to evade the prohibition against sub-letting;

- (b) that the Plaintiff at the time of his purchase knew that the premises had already been sub-let;
- (c) that since the 1st Defendant had already sub-let the premises without the permission of his landlord Akbar Ali prior to the purchase of the premises by the Plaintiff, the Plaintiff was not entitled to eject the 1st Defendant on the ground of the sub-letting, which had been done when he was not the landlord. – *Vide* Judgment of Sirimane J. in *Wallis v. Hector Silva* <sup>(1)</sup>.
- (d) that in any event, the Defendant was protected by the provisions of section 10(7) of the Rent Act.

The Plaintiff appealed from the said judgment to the Court of Appeal and the Court of Appeal by its judgment dated 15th January 1981 allowed the appeal.

The Court of Appeal had two questions to decide, viz:

- (1) Whether a purchaser is entitled to maintain an action for sub-letting prior to his purchase.
- (2) Whether section 10(7) of the Rent Act was a bar to the Plaintiff maintaining his action.

On the first question there is a conflict of views. As against the view of Sirimane J. a contrary view has been taken in *Thaha v. Sadeen* <sup>(2)</sup> and in *Paranavithane v. Themanis* <sup>(3)</sup>. It has also been held that sub-letting is a continuing breach of a statutory provision. (*Sayed Mohamed v. Meera Pillai* <sup>(4)</sup> and *Samsudeen v. Ibrahim Marikkar* <sup>(5)</sup>) In view of our decision on the second question, it is not necessary for us to go into the controversy involved in the first question and hence we do not express any view on the first question.

Section 10(7) of the Rent Act reads as follows:

“Nothing in sub-section (2), sub-section (5) or sub-section (6) shall apply to the sub-letting of any premises or part thereof without the prior consent in writing of the landlord, where such premises or part thereof had been sub-let prior to the date of commencement of this Act to any person, so long as that person continues to be a sub-tenant of the premises or part thereof.”

The Court of Appeal has erred in taking the view that the above provision does not apply to the facts of the present case as the

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tenant had already vacated the premises after putting his sub-tenant into occupation thereof. This construction of this section is not tenable. The condition precedent for the applicability of this section is that "that person continues to be the sub-tenant of the premises or part thereof. "That person" in this context means the sub-tenant and not the tenant. It is not disputed that at all relevant times, the 2nd defendant, the alleged sub-tenant, has been in occupation of the premises in suit. In our view, the judgment of the Court of Appeal on this question cannot be sustained.

The Court of Appeal has further invoked section 28 of the Rent Act and has held that that section applies to the facts of this case. Section 28 provides for the ejection of *a tenant of any residential premises* who has ceased to occupy such premises for six months. This section has, *ex-facie*, no application to "business premises". Since the premises in question are "business premises", section 28 has no application to the facts of this case.

The appeal is allowed. The judgment of the Court of Appeal is set aside and the plaintiff's action is dismissed with costs in all three Courts.

Ismail, J.                    I agree.  
Weeraratne, J.            I agree.

*Appeal allowed*