

1953

Present : Gratiaen J. and K. D. de Silva J.

CHETTINAD CORPORATION LTD., Appellant,
and A. M. M. ZANEEK, Respondent

S. C. 165—D. C. Colombo, 379Z

Rent Restriction Act—Notarial lease—Lessee in arrears of rent—Right of lessor to eject lessee—Termination of lease—Condition precedent.

A lessor cannot sue his lessee for ejectment under the Rent Restriction Act for being in default of rent unless he can first establish the termination of the contract of lease either by due notice or by effluxion of time.

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *P. Navaratnarajah*, for the defendant appellant.

E. B. Wikramanayake, Q.C., with *N. Samarakoon*, for the plaintiff respondent.

Cur. adv. vult.

October 15, 1953. GRATIAEN J.—

A person named Abdul Majeed died on 20th March, 1946, leaving a last will and testament whereby he appointed S. C. Samuel to be the executor of his estate, and devised, *inter alia*, the property which is the subject matter of this action to the plaintiff and two others.

S. C. Samuel, in the exercise of the powers vested in him as executor, leased the property to the defendant Company under the terms of a notorially attested indenture of lease P 1 dated 4th May, 1949. The stipulated rental was Rs. 500 *per mensem* and the lease was, subject to certain conditions, to continue until 31st May, 1952. The leased property was protected by the provisions of the Rent Restriction Act, No. 29 of 1948.

On 12th June, 1950, Samuel as executor purported to convey the property to the plaintiff and his co-devisees, but it is clear law that the title to the property had already passed to them automatically upon Abdul Majeed's death, subject of course to the special powers vested in the executor for purposes of administration.

On 8th November, 1951, Samuel wrote to the defendant Company directing them to pay all future lease rent under the indenture P1 to the plaintiff, and this the Company agreed to do. In these circumstances the plaintiff was the "person entitled to receive the rent" to the exclusion of Samuel, and therefore became the "landlord" of the premises within the meaning of Section 27 of the Rent Restriction Act. On 11th January, 1952, he gave notice to the Company that he would require the property to be returned to *him* on the expiry of the lease, *namely on 31st May, 1952*.

I shall assume for the purposes of this appeal (although I do not decide) that the plaintiff had "stepped into the shoes" of Samuel, the original lessor, for all purposes connected with the enforcement of the Company's contractual obligations under the indenture of lease P1. *Upon this assumption*, as the Company had defaulted in the payment of rent to the substituted contractual lessor, he was entitled to claim the ejection of the lessee *after the termination of the lessee's rights of occupation under the lease*. But this is precisely what the plaintiff did not do. Instead, on 21st May, 1952—i.e., 10 days before the expiry of his notice dated 11th January, 1952—he sued the Company (a) for arrears of rent, (b) for an order declaring the indenture of lease P1 cancelled, and (c) for ejection. It seems to me that, even upon the view most favourable to the plaintiff, his action was premature in so far as the claims for cancellation and ejection were concerned. It is true that under the Rent Restriction Act a tenant who is in default of rent for over a stipulated period becomes deprived of the statutory protection which he may ordinarily claim after the contract of tenancy has been duly terminated. But this does not relieve the landlord of establishing the termination of the contract (either by due notice or by effluxion of time) before claiming a decree for ejection. This aspect of the legal position does not seem to have been brought to the notice of the learned District Judge.

In my opinion, the plaintiff's action was premature in so far as he claimed a decree for ejection and a declaration that the indenture of lease P1 was duly terminated. On the other hand, his claim for arrears of rent was clearly maintainable.

I would set aside the decree under appeal and substitute for it a decree ordering the defendant Company to pay to the plaintiff a sum of Rs. 1,500 (representing arrears of rent) with legal interest thereon from the date of action until payment in full. In other respects, the plaintiff's action must be dismissed. The plaintiff is entitled to his costs of trial, but must pay to the defendant Company the costs of this appeal.

K. D. DE SILVA J.—I agree.

Decree varied.
