

1948

Present : **Basnayake J.**

MAMUHEWA, Appellant, and RUWANPATIRANA, Respondent

S. C. 176—C. R. Matara, 2,440

*Rent Restriction Ordinance—Premises required for trade or business—Must be in existence—Ordinance 60 of 1942—Section 8 (c).*

The trade or business contemplated in section 8 (c) of the Rent Restriction Ordinance is an existing trade or business and not one *in posse*.

**A**PPPEAL from a judgment of the Commissioner of Requests, Matara.

*Christie Seneviratne*, for plaintiff, appellant.

*Azeez*, for defendant, respondent.

December 17, 1948. **BASNAYAKE J.**—

The plaintiff-appellant (hereinafter referred to as the plaintiff) is, since October 20th, 1947, the owner of premises bearing assessment No. 1708 in Chetty Street, Weligama. The defendant has been the tenant of those premises for nearly 13 years. When he first entered on the tenancy the plaintiff was only a co-owner with his brothers and sisters. Some time prior to the institution of this action the plaintiff acquired their rights and became sole owner.

The plaintiff seeks to eject the defendant from the premises in question on the ground that he requires them to conduct a business of his own. The defendant resists the action on the ground that they are not reasonably required by the plaintiff for "his business" as at present he has no business. He also states that he cannot obtain suitable alternative accommodation.

The learned Commissioner has dismissed the plaintiff's action, holding that the premises are not reasonably required for the business of the plaintiff and that no suitable alternative accommodation is available to the defendant.

It is clear from the evidence that the plaintiff was not, either on the date on which he instituted this action or at the time of the trial, engaged in any trade or business. Two years prior to the date on which he gave evidence he had a cafe at a place called Pelena outside the Weligama town limits, which he managed for about six months. He was never a baker, and now he wants the premises occupied by the defendant to run a bakery.

I do not think that under section 8 (c) of the Rent Restriction Ordinance, No. 60 of 1942, a person who has no trade or business *in esse* at the time of the institution of his action is entitled to claim any premises of which he is landlord on the ground that they are reasonably required

for the purposes of his trade or business. The words “ for the purposes of his trade, business, profession, vocation or employment ” to my mind suggest an existing trade, business, &c. A business or trade *in posse* cannot in my view be properly described as “ his business ”. The same may be said of profession, vocation or employment.

The plaintiff is therefore not entitled to succeed. The appeal is dismissed with costs.

*Appeal dismissed.*

