

1964      *Present* : Tambiah, J., and Sri Skanda Rajah, J.

E. G. P. KALPAGE *et al.*, Appellants,  
and L. A. GUNAWARDANE, Respondent

*S. C. 416/1962—D. C. Colombo, 9352/L*

*Rent Restriction Act—Premises owned in common—Lease of entire premises by one co-owner—Right of the other co-owners to eject the tenant.*

Where there are a number of co-owners in respect of rent-controlled premises, a lease of the entire premises executed by one of them does not bar the other co-owners, in the absence of an issue on acquiescence, from having the tenant ejected as a trespasser.

**A** PPEAL from a judgment of the District Court, Colombo.

*H. W. Jayewardene, Q.C.*, with *Nimal Senanayake*, for the plaintiffs-appellants.

*Annesley Perera*, for the defendant-respondent.

July 9, 1964. TAMBIAH, J.—

The plaintiffs brought this action to eject the defendant from premises No. 46, Maligawatta Road, Colombo.

The plaintiffs, along with their sister Rita Kalpage, became entitled to the abovementioned premises in equal shares by deed No. 1889 of 16th July 1952, Rita Kalpage leased the premises to the defendant on Indenture of lease, marked P1, dated 11.6.1959. It is common ground that the Rent Restriction Act applies to these premises. The question for decision is whether the plaintiffs can succeed in ejecting the defendant from the said premises.

Rita Kalpage as a co-owner of the said premises had the right to lease her 1/3rd share (vide *Vaz. v. Haniffa*<sup>1</sup>). It is also settled principle of law that a co-owner can eject a trespasser from the land, which is held in common, without joining the other co-owners (vide *Ismail v. Andries*<sup>2</sup>; *Unus Lebbe v. Zayee*<sup>3</sup>).

In *Mendis v. Simion*<sup>4</sup> the view was taken that a co-owner of an undivided land is entitled to have a trespasser ejected from the whole land. In common law, therefore, the plaintiffs can succeed in this action, since the defendant, insofar as the plaintiffs are concerned, is a trespasser.

Issue No. 1 in the instant case is: "Is the defendant in wrongful and unlawful occupation of the land and premises?". Although no issue on acquiescence was framed in this case, the learned District Judge has held that there was acquiescence on the part of the plaintiffs in allowing Rita Kalpage to lease the whole of the premises and to receive the whole of the rent. In the absence of pleadings on the question of acquiescence, the learned District Judge has misdirected himself in holding that the plaintiffs had acquiesced in allowing Rita Kalpage to lease the whole of the premises. By this error, the learned District Judge had answered issue No. 1 in the negative.

Are there any statutory fetters placed on the plaintiffs to bring this action in the instant case? The Rent Restriction Act only places a fetter on the landlord to bring an action against his tenant. A perusal of section 13 and other relevant sections of the Act clearly shows that the Legislature placed restrictions on the landlord to bring an action against his tenant. The Act, however, does not place an absolute bar on the landlord's rights to bring an action for ejection. He could, for example, bring an action for ejection with the permission of the Rent Control Board. He could also bring an action on one of the grounds set out in section 13 of the Act. As Megarry, referring to the English actions dealing with Rent Restriction Acts, points out: "The Acts do not interfere with leases and tenancy agreements more than is necessary to carry out their purposes; they are 'Acts for the protection of tenants, and not Acts for the penalising of landlords'" (Rent Acts by R. E. Megarry (8th Edition) p. 171).

Counsel for the respondent contended that the defendant, being a statutory tenant, had the right to remain in possession. The term "statutory tenant" is a convenient phrase used by judges to express the protection a tenant enjoys against his landlord. The Rent Restriction Act does not give any protection to any statutory tenant against a person who is not his landlord. The Act only applies if a landlord, or a person in the position of a landlord, brings an action against a tenant. The case of *Aron Singh v. Samuel Peter*<sup>5</sup>, which was cited before us, can clearly be distinguished. In that case, the co-owners

<sup>1</sup> (1948) 49 N. L. R. 286.

<sup>3</sup> (1893) 3 S. C. R. 56.

<sup>2</sup> (1885) 7 S. C. C. p. 48.

<sup>4</sup> (1915) *Balasingham's Notes of Cases* 36.

<sup>5</sup> (1962) 63 N. L. R. 137.

had leased the land to the defendant. Thereafter, the co-owners sold the property to the plaintiff who elected to accept the defendant as his tenant. In such circumstances, the purchaser-plaintiff would have stepped into the shoes of the landlords.

In *Britto v. Heenatigala*<sup>1</sup> Gratiaen J. agreed with the contention that it would be quite wrong to include within the definition of a "landlord" any person other than the original lessor or someone who derives his title from the original lessor. "If, therefore," said Gratiaen J., (vide 57 N.L.R. at page 330) "the true owner of the leased premises vindicates his title against the tenant's contractual lessor, the statutory protection which the tenant enjoyed against the lessor would not be available against the true owner."

I agree with the views expressed by Gratiaen J. in the abovementioned case. If the law was otherwise, a co-owner who had leased the entire property can, acting with the collusion of the lessee, keep out the other co-owners, and then claim title by prescription.

For these reasons, I set aside the order of the learned District Judge. Enter judgment as prayed for, with damages at Rs. 18 from 1.8.1960 and with costs in the lower court. The appellant is entitled to the costs of this appeal.

SRI SKANDA RAJAH, J.—I agree.

*Appeal allowed.*

