

1953

Present : Pulle J.

S. P. VEERAVAGEE PILLAI *et al.*, Appellants, and A. M. NABISSA
UMMA, Respondent

S. C. 218—C.R. Colombo, 31,183

Rent Restriction Act, No. 29 of 1948—Landlord not owner of premises—His rights under Section 13 (1) (c)—Section 26—Meaning of term “landlord”.

The absence of a *jus in re* in a plaintiff is not a bar to the enforcement of his rights as a “landlord” as defined in the Rent Restriction Act.

Because under certain circumstances a tenant under a written contract of tenancy is deemed by Section 26 of the Rent Restriction Act to be a landlord it does not follow that a tenant who is proved to have let the premises to a sub-tenant cannot assert his rights as a landlord under the Act in the absence of a written contract of tenancy.

APPPEAL from a judgment of the Court of Requests, Colombo.

H. W. Tambiah, with *N. C. J. Rustomjee*, for the plaintiffs appellants.

E. B. Wikramanayake, Q.C., with *E. R. S. R. Coomaraswamy*, for the defendant respondent.

Cur. adv. vult.

January 9, 1953. PULLE J.—

The plaintiffs who are the appellants sought to eject the defendant who was their tenant from premises No. 84, 3rd Cross Street, Pettah, on the ground that they were reasonably required for the purposes of their business within the meaning of section 13 (1) (c) of the Rent Restriction Act, No. 29 of 1948. The learned Commissioner by his judgment dated 30th May, 1951, found in plaintiffs' favour on this point but felt constrained to dismiss the action on the authority of *Hameed v. Anamalay*¹ because the plaintiffs did not have a *jus in re* at the time material to the contract of tenancy. The Commissioner has found that at the time the plaintiffs became the tenants under the owner the defendant was already a tenant under that owner. In appeal the ground on which the action was dismissed could not be sustained in view of the decision delivered on 4th July, 1951, by a majority of a Bench of three Judges in *De Alwis v. Perera*² that the absence of a *jus in re* in a plaintiff is not a bar to the enforcement of his rights as a "landlord" as defined in the Act.

Learned Counsel for the defendant, relying on the provisions of section 26 of the Act, urged that the plaintiffs could not maintain the action as they were neither the owners of the premises nor tenants under a written contract of tenancy and that they could not, therefore, be deemed to be landlords. In view of the obscurity of this section I laid the case by pending an authoritative pronouncement on the section by the Bench before whom the appeal in S. C. No. 36/C. R. Colombo Case No. 1550, Supreme Court Minutes of 5th January, 1953, was listed for argument. This Bench did not find it necessary to interpret section 26 and I have, as best I can, to decide whether upon any view of this difficult section the argument can prevail.

Now it is common ground that the defendant did not at any time occupy or use the premises herself but had sub-let them to her brother-in-law. It cannot, therefore, be said that the plaintiffs come within the preamble of section 26 which reads,

"In any case where the rent of any premises is collected, from the person in actual occupation thereof, by a person who is neither the owner of the premises nor the tenant thereof under a written contract of tenancy executed in his favour"

Apart from the foregoing I do not see any reason for denying to a plaintiff who is admitted, as in the present case, to be a landlord the rights reserved to him under the Act. Because under certain circumstances a tenant under a written contract of tenancy is deemed by section 26 to be a landlord it does not follow that a tenant who is proved to have let the premises to a sub-tenant cannot assert his rights as a landlord under the Act in the absence of a written contract of tenancy.

In my opinion the appeal succeeds. The decree appealed from is set aside with costs both here and below and judgment will be entered for the plaintiffs against the defendant for possession and for such sums as may be found due on account of rent or damages or both.

Appeal allowed.

¹ (1946) 47 N. L. R. 558.

² (1951) 52 N. L. R. 433.