

1958

Present: Sansoni, J.

P. K. KALANDANKUTTY *et al.*, Appellants, and C. W. WANASINGHE,
Respondent

S. C. 128—C. R. Ratnapura, 5,645

Rent Restriction Act—Sub-letting—Continuity of cause of action—Res judicata.

Where there is a continuing breach by a tenant of the statutory prohibition against sub-letting, a decree entered in an earlier action instituted by the landlord cannot operate as *res judicata* in a second action.

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

V. Thillainathan, for the Defendants-Appellants.

W. Wimalachandra, with *M. S. A. Hassan*, for the Plaintiff-Respondent.

Cur. adv. vult.

October 13, 1958. SANSONI, J.—

Two grounds were urged in this appeal. They were (1) that the decree in the earlier action No. 5498 was *res judicata*; (2) that there was no proof of sub-letting. In my opinion both grounds fail.

With regard to the question of sub-letting, there was documentary evidence that the 1st defendant was the licensee of the eating-house carried on in these premises until 1950. From 1950 the 2nd defendant was the licensee and he continued to be that up to and including the year 1956, as shown by the extract from the licence register P2. The plaintiff

in his evidence stated that the 3rd defendant was presently in occupation of the premises and was running a tea boutique there. There was no contradiction from the defendants' side of any of the evidence led for the plaintiff, and it was therefore open to the learned Commissioner to find that the 2nd and 3rd defendants were sub-tenants of the 1st defendant.

The plea of *res judicata* would have been a good one if the sub-letting had ceased with the termination of action No. 5498 in October 1955. It would not have been open to the plaintiff, in that event, to sue again on the earlier sub-letting. But the sub-letting has been shown to have continued in spite of the earlier decree. There was thus a continuing breach by the 1st defendant of the statutory prohibition against sub-letting, which enabled the plaintiff to institute a fresh action in respect of the subsequent breach, for such breach constituted a new cause of action.

For these reasons I dismiss this appeal with costs.

Appeal dismissed.
