

1968

*Present* : Sirimane, J.

P. T. SAMUEL, Appellant, and M. M. MOHIDEEN  
and others, Respondents

*S. C. 142/67—C. R. Colombo, 91325*

*Landlord and tenant—Destruction of premises by fire—Whether the tenancy can continue.*

Where a fire breaks out in a leased urban tenement and the damage is so extensive that the tenement can no longer be used for the purpose for which it was leased, the premises can no longer be regarded as still in existence for the tenancy to continue.

**A**PPPEAL from a judgment of the Court of Requests, Colombo.

*K. Shanmugam*, for the Plaintiff-Appellant.

No appearance for the Defendants-Respondents.

December 15, 1968. SIRIMANE, J.—

The plaintiff in this action was a tenant of premises No. 117, Prince Street, Pettah, which has been used as a shop. He filed this action to prevent his landlord from reconstructing the said premises.

It is common ground that a fire had broken out in premises No. 119 which is right above the premises in question. According to the evidence of the Architect, which was the only expert evidence in the case and which the learned Commissioner has accepted, these premises have been damaged by fire, in particular the roof. Before the roof can be replaced the walls of these premises would have to be reconstructed from the foundation. It is argued by the Counsel for the appellant that the premises are still not completely destroyed.

The tenancy of an Urban tenement relates to the existence of a building and is unlike the tenancy of a land on which there is a plantation. Here the evidence shows that even though the premises are not completely destroyed in the sense that some of the walls are still standing, yet the leased premises can no longer be used as a building. In such a case, where the leased tenement is so extensively damaged that it can no longer be used, for the purpose for which it was leased, it is impossible to say that the premises are still in existence for the tenancy to continue. In my opinion the learned Commissioner was right in dismissing the action. The appeal is dismissed.

*Appeal dismissed.*

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