1969 *Present :* Siva Supramaniam, J.

T.W. CHARLES SILVA, Appellant, *and* Mrs. D. C. MANCHANAYAKE, Respondent

S. C. 125/66—C. R. Colombo, 90762

*Rent Restriction Act (Cap. 274), as amended by Act No. 12 of 1966—Sections 9, 12A, 13, 23—Sub-letting of rented premises—Word "premises" in s. 12 A (b) includes "part of the premises"—Rent Restriction (Amendment) Act, No. 10 of 1961, s. 11—Servitude—*Jus superficiarium.

If a tenant of premises to which section 12 A of the Rent Restriction Act applies sublets a part of the premises without the written authority of the landlord, he is liable to be ejected from the premises.

A tenant of premises governed by section 12 A of the Rent Restriction Act erected, with the consent of the landlord, certain temporary buildings on the land which formed part of the premises and let those buildings to a third party S without the landlord's written authority. During the period of the tenancy, the local authority assessed separately for rating purposes the temporary buildings and the land on which they stood. The rates in respect of the newly assessed buildings were paid by the tenant and not by the landlord.

Held, (i) that it could not be contended that what was let by the tenant to S was a *jus superficiarium*.

(ii) that, despite the variation of language between section 9 (1) and section 12 A (*b*) of the Rent Restriction Act, the latter section prohibited the subletting not only of the entirety of the premises let but also of part of the premises. Therefore, when the tenant let the temporary buildings, he necessarily let also the land on which the buildings stood, and that land was unquestionably part of the premises of which he was tenant. He was thus liable to be ejected on the ground of subletting.

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

H. W. Jayewardene, Q.C., with *P. Nagendran*, *B. Eliatamby* and *M. Devasagayam*, for the defendant-appellant.

C. Ranganathan, Q.C., with *D. T. P. Rajapakse*, for the plaintiff-respondent.

Cur. adv. vult.

July 31, 1969. SIVA SUPRAMANIAM, J.—

The question that arises for decision on this appeal is whether a tenant of rent controlled premises, the standard rent of which does not exceed Rs. 100 per month, who, after erecting with the consent of the landlord, certain temporary buildings on the land which forms part of the said premises lets those buildings to a third party without the landlord's written authority is liable to ejectment on the ground that he has sublet the premises in terms of S. 12 A of the Rent Restriction Act (Cap. 274) as amended by Act No. 12 of 1966.

The defendant took on rent from the plaintiff's husband premises No. 46 (renumbered later as No. 128), Subadrarama road, Nugegoda, which consists of a tiled house and land appurtenant thereto at a monthly rental of Rs. 20. The defendant erected on the appurtenant land, with the permission of the plaintiff's husband certain temporary buildings. The defendant undertook to demolish the said buildings on termination of the tenancy and to remove the materials without causing any damage to the land. On the death of the plaintiff's husband, the defendant became the tenant of the plaintiff on the same terms and conditions.

During the pendency of the tenancy, the local authority assessed separately for rating purposes the temporary buildings and the land on which they stood and numbered that portion as No. 128/1. The rates in respect of No. 128/1 were paid by the defendant while the plaintiff continued to pay the rates in respect of No. 128. It is admitted that the defendant, without the consent of the plaintiff, gave on rent the portion numbered 128/1 to one Subramaniam at a monthly rental of Rs. 90 and that Subramaniam continued to be the tenant of that portion even after the date of the commencement of the instant case.

The plaintiff's case is that the defendant sublet the premises of which he was the tenant without her written consent and is consequently liable to be ejected therefrom in terms of S. 12A of the Act. The word "premises" was not defined in the Act as it originally stood but by an amendment effected by S. 11 of the Rent Restriction (Amendment) Act No. 10 of 1961, it was defined as follows :—

> "Premises mean any building or part of a building together with the land appertaining thereto."

It was submitted by Mr. Jayewardene that the buildings which bore the assessment No. 128/1 were erected by the defendant at his own expense with the permission of the plaintiff and what was let to Subramaniam was the right of a superficiary and that there was no subletting of the premises of which the defendant was the tenant. *Jus superficiarium* is a servitude recognised by our common law. Quoting Grotius 2. 46. 9. Layard C.J. in *Ahamado Natchie v. Muhamadu Natchie*[1] explained the right as follows :—

> "The *jus superficiarium* is the right which a person has to a building standing on another's ground .....It is the right to build on the soil and to hold and use the building so erected until such time as the owner of the soil tenders the value of the building, if the amount to be paid has not been previously agreed upon."

Lascelles C.J., commenting on this right, stated as follows in the same case when it came up on appeal after a retrial :—

> "It is, however, clear that agreement between the landowner and the person who acquires the right is the foundation of the right. Voet 43, 17 defines "superficies" as denoting things such as trees, plants and especially buildings, growing or built on the surface of the soil which anyone has erected on land belonging to another with the consent of the owner on the condition that he may keep them in perpetuity or for a considerable period and generally on payment of rent."

It is unnecessary for the decision of this case to consider the question whether in Ceylon the servitude of *jus superficiarium* can be created otherwise than by a notarial agreement.

The permission that is granted by a landlord to a tenant to erect a temporary building on a land which is the subject matter of the tenancy, subject to the condition that the building is dismantled on the termination of the tenancy and the materials are removed, is not *jus superficiarium*. The nature of the permission in such a case negatives the grant of a right to the builder to remain in possession of the building in perpetuity or for a considerable period or until the owner tenders the value of the building. The submission, therefore, that what was let by the defendant to Subramaniam was the *jus superficiarium* must fail.

[1] *(1905) 8 N. L. R. 330 at p. 331.*

It is common ground that the defendant did not sublet the entirety of the premises of which he was the tenant. But when he let the temporary buildings, he necessarily let also the land on which the said buildings stood, and that land was unquestionably part of the "premises" of which he was the tenant under the plaintiff. The question, then, is whether the subletting by the tenant of a part of the premises without the written authority of the landlord entitles the latter to institute an action for ejectment of the tenant. S. 12A of the Act permits a landlord to institute an action to eject the tenant of any premises the standard rent of which for a month does not exceed one hundred rupees where "such premises have been sublet without the written authority of the landlord of such premises". Mr. Jayewardene submitted that it is only where the entirety of the premises have been sublet that the landlord has a right of action, as the words "such premises" in S. 12A do not include "part of the premises". He argued that since S. 9 of the Act which imposes a general prohibition on subletting by a tenant without the authority of the landlord specifies "the premises or any part thereof", the legislature must have deliberately intended to exclude the subletting of a part of the premises from the ambit of the prohibition in cases where the standard rent does not exceed Rs. 100 per month. In further support of the argument it was said that S. 12A was enacted to give additional protection to tenants of small premises and that, therefore, the legislature had intentionally narrowed down the grounds for ejectment by omitting certain grounds applicable to other premises under S. 13. The question, then, is whether the legislature, by implication, intended to permit tenants of premises to which S. 12A applies, to sublet part of the premises, despite the express prohibition contained in S. 9 (1) against the subletting of any part of any premises to which the Act applies.

If a prohibition is imposed on alienation by way of sale, gift or lease of any premises, such prohibition would ordinarily apply to alienation of any part of the premises. If the provisions of S. 12A had been contained in an independent statute and not in an amending Act, there would have been little room for the argument that the prohibition against subletting does not apply to the subletting of a part of the premises. The difficulty in the present case arises from the fact that there is a variation of language between the principal Act and the amending Act and according to the ordinary canons of construction, the variation would be deemed to have been made deliberately.

S. 9 (1) of the Act prohibits the subletting by the tenant without the written consent of the landlord of the whole or any part of any premises irrespective of the rental value and under S. 23 a contravention of the prohibition constitutes an offence. Mr. Ranganathan submitted that S. 9 (1) has not been repeated by any provision in the amending Act and that it would be unreasonable to impute to the legislature an implied intention to permit under S. 12A (*b*) what had been prohibited under S. 9 (1). Mr. Jayewardene, however, argued that subsections (1) and (2) of S. 9 refer to "any premises or any part thereof" and if the legislature

intended S. 12A (*b*) also to apply to the whole or part of the premises, S. 12A (*b*) was superfluous as S. 9 (1) and (2) would have covered the case. He submitted that the legislature would not have enacted a superfluous provision of law.

S. 12A is so framed as to categorise all the circumstances under which a landlord may institute an action to eject his tenant, in cases where the authorised rent of the premises does not exceed Rs. 100 per month. The section provides that unless anyone of those circumstances is present, no action may be instituted by the landlord "notwithstanding anything in any other law". If, therefore, the provision relating to subletting had not been included in S.12 A, it could have been contended that subletting was not a ground for ejectment in respect of premises to which S. 12A applied. Hence the contention of Mr. Jayewardene that if Mr. Ranganathan's argument is accepted, S. 12A would be a superfluity cannot prevail.

The best way to find out the intention of the legislature is to examine in what sense the word "premises" has been used in other similar clauses of the same section. S. 12A (*c*) authorises an action where "such premises have been used by the tenant thereof or by any person residing or lodging with him or being his subtenant for an illegal or immoral purpose". Can it be argued that the use of a part of the premises for an illegal or immoral purpose will not entitle the landlord to institute an action? Obviously, in this clause the word "premises" includes "part of the premises". Similarly S. 12A (*d*) authorises an action where "wanton destruction or wilful damage to such premises has been caused by the tenant thereof or ....." Does it mean that the landlord should wait till wanton destruction or damage is caused to the entirety of the premises before he can institute an action? Obviously, in this clause too the word "premises" includes "part of the premises". The legislature could not have intended the word "premises" to include "part of the premises" in clauses (*c*) and (*d*) but to exclude "part of the premises" in clause (*b*). It is therefore reasonable to hold that despite the variation in language between S. 9 and S. 12A, the legislature intended the word "premises" to include "part of the premises" in S. 12A (*b*). As Maxwell (Interpretation of Statutes, 11th Edition, p. 316) says: "Though the statute is the language of the three estates of the realm, it seems legitimate in construing it to take into consideration that it may have been the production of many minds and that this may better account for any variety of style and phraseology which is found than a desire to convey a different intention."

I am therefore of opinion that a tenant of premises to which S. 12A applies who sublets a part of the premises without the written authority of his landlord is liable to be ejected from the premises.

I dismiss the appeal with costs.

Appeal dismissed.