

1970

Present : Thamotheram, J.

W. A. M. WELEGODA, Appellant, and M. A. JOSEPH, Respondent

*S. C. 173/67—C. R. Colombo, 93580**Appeal—Tenancy action—Jurisdiction—Fresh evidence as to whether the premises in question are governed by the Rent Restriction Act—Admissibility.*

Where, in an action brought by a landlord to eject his tenant, the main issue is whether the premises in question are governed by the Rent Restriction Act, fresh evidence relating to that issue may be led at the stage of appeal inasmuch as such evidence relates to a question of jurisdiction.

¹ (1958) 60 N. L. R. 355.² (1957) 59 N.L.R. 501

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

P. Somatilakam, for the plaintiff-appellant.

A. Sivagurunathan, for the defendant-respondent.

Cur. adv. vult.

JUNE 28, 1970. THAMOTHERAM, J.—

The plaintiff-appellant instituted an action in the Court of Requests, Colombo, seeking to eject the defendant-respondent from premises No. 66 Pamunuwila, Kelaniya.

The plaint was filed on 21.5.66. Many issues were raised but evidence was led mainly on the issue as to whether the premises in question were governed by the Rent Restriction Act at the relevant time.

The defendant-respondent who raised this issue led in evidence the notification appearing in Government Gazette No. 10,164 of October 13th, 1950 which declared the Kelaniya Village area in the Colombo District as an area to which the Rent Restriction Act applied. The plaintiff-appellant accepted this evidence but sought to establish that the premises in question were excepted premises within the meaning of the Rent Restriction Act. The learned Judge held against the plaintiff.

At the hearing of this appeal Mr. Somatilakam, counsel for the appellant, brought to my notice the existence of three Gazette notifications and contended that the Rent Restriction Act did not apply to the premises in question at the relevant time. By notification in the Government Gazette No. 5,091 of 2.10.1891, the village Pamunuwila was included in Kelaniya sub-division. By a notification in the Government Gazette Extraordinary of 8.11.63 the new village of Biyagama was constituted. The same notification revoked with effect from 1.7.64 the declaration dated 24.9.1891 and published in Government Gazette No. 5,091 relating to the constitution of Kelaniya village. The evidence in the present case is that Pamunuwila is within the village area of Biyagama. By notification of Ceylon Government Gazette of 15.9.67 the Rent Restriction Act was declared to be in operation in the area within the administrative limits of Biyagama Village Council.

It will be seen therefore that Mr. Somatilakam's submission is one of substance which has to be looked into very carefully. I permitted him to refer to this new material as it related to the question of jurisdiction. The effect of the Rent Restriction Act is not to afford a statutory defence to a party but limit the jurisdiction of the Court—Vide Goddard L.J. in *Davies v. Warwick*¹ and Keuneman, J., in *Maroof v. Leaff*².

I order a new trial on the ground of the discovery of fresh material which relates to the fundamental issue as to whether the Rent Restriction Act applied or not at the relevant time. I make no order as to costs.

Case sent back for a new trial.

¹ (1943) 1 K. B. at 336.

² (1944) 46 N. L. R. 25.