

1946 *Present : Wijeyewardene S.P.J. and Cannon J.*

PERUMAL, Appellant, and GNANAPANDITHAN, Respondent.

340—D. C. Badulla, 7,784, with Application 388.

Landlord and tenant—Action for ejectment and damages—Consent decree enabling occupation by tenant for further period—Absence of clause providing for ejectment at the end of the extended period—Subsequent action by landlord for ejectment—Requirement of notice to quit—Rent Restriction Ordinance, No. 60 of 1942, s. 8.

In an action filed by a landlord against his tenant for ejectment and damages a decree was entered by consent on June 1, 1943. One of the terms of the settlement was that the defendant should pay the plaintiff rent at Rs. 50 per month for the premises occupied by him from June 1, 1943, to September 30, 1943, and Rs. 100 a month for October and November, 1943, if he desired to continue the tenancy for the said two months. There was, however, no clause in the decree providing for writ of ejectment to issue if the defendant failed to quit by November 30, 1943.

¹ (1945) 46 N. L. R. 370.

The landlord filed a separate action in May, 1944, alleging that the tenant was in wrongful possession of the premises after November 30, 1943, and claiming ejectment and damages.

Held, that under the decree entered of consent the defendant became a tenant under the plaintiff for the period ending November 30, 1943, with the option of terminating his tenancy earlier on September 30, 1943, and that in the case of such a tenancy no notice need be given by the landlord to terminate the tenancy.

Quære, whether the tenant in such a case is entitled to claim the benefit of section 8 of the Rent Restriction Ordinance.

A PPEAL, with application for revision, from a judgment of the District Judge of Badulla.

H. V. Perera, K.C. (with him *N. Kumarasingham*), for the defendant, appellant.

N. E. Weerasooria, K.C. (with him *D. W. Fernando* and *Dodwell Gunawardene*), for the plaintiff, respondent.

Cur. adv. vult.

July 30, 1946. WIJEYEWARDENE S.P.J.—

The defendant became a tenant of the plaintiff some years ago and in June, 1942, the plaintiff gave the defendant notice to quit the premises at the end of the following month. As the defendant failed to comply with the notice, the plaintiff filed action No. 7,485 against him in October, 1942, in the District Court of Badulla for ejectment and damages. A decree was entered by consent in that action on June 1, 1943. That decree was in the following terms :—

- (a) That the defendant do pay the plaintiff Rs. 625 as rent and damages up to May 31, 1943.
- (b) That he pay the plaintiff rent at Rs. 50 per month for the premises occupied by him from June 1, 1943, to September 30, 1943, and Rs. 100 a month for October and November, 1943, if he desires to continue the tenancy for the said two months.
- (c) That defendant do pay all assessment taxes for the said period of six months during his tenancy.
- (d) That the plaintiff be entitled to take the produce of the coconut trees on the premises and to remove from the defendant's yard two door frames now lying there and belonging to him.
- (e) That the defendant do pay to the plaintiff Rs. 50 as costs of this action.
- (f) That the defendant do allow the plaintiff to commence any building operations, during the period June 1, 1943, to November 30, 1943, on the western end of the premises between the garage and the western boundary and allow the plaintiff's workmen to have access to the building site during the day.

In January, 1944, the plaintiff moved to have the decree amended by inserting an additional clause :—“ In any event writ of ejectment to issue on December 1, 1943, if defendant fails to quit by November 30, 1943 ”.

He pleaded in support of that application that it was through inadvertence that the proposed clause was not inserted in the decree as it was originally entered. The defendant opposed that application and the District Judge refused to amend the decree. No appeal was taken against that order.

Thereafter, the plaintiff filed the present action in May, 1944, alleging that the defendant was in wrongful possession of the premises after November 30, 1943, and claiming ejectment and damages. The defendant filed answer claiming *inter alia* the benefit of section 8 of the Rent Restriction Ordinance, No. 60 of 1942. The District Judge held that the plaintiff was entitled to a writ of ejectment and to damages until he got possession of the premises.

Construing the decree in D. C. Badulla, 7,485, in a manner most favourable to the plaintiff I hold that under the decree the defendant became a tenant under the plaintiff for the period ending November 30, 1943, with the option of terminating his tenancy earlier on September 30, 1943. In the case of such a tenancy, no notice to quit need be given by the landlord to terminate the tenancy. The question that has to be considered then is whether the defendant is entitled to claim the benefit of section 8 of the Rent Restriction Ordinance. There has been a certain conflict of views on the question whether a tenant like a lessee under a notarial lease whose tenancy comes to an end without a notice to quit could be considered as a tenant to whom section 8 of the Rent Restriction Ordinance applies. I do not propose to express any opinion on that point as that will shortly be decided by a Bench of three Judges. Assuming however for the purposes of this case that section 8 of the Rent Restriction Ordinance is applicable to the tenancy of the defendant, I am of opinion that on the evidence placed before him the District Judge has reached a correct decision in holding in favour of the plaintiff.

I would dismiss the appeal with costs.

The application for revision is also dismissed.

CANNON J.—I agree.

Appeal dismissed.

Application dismissed.
