

1970

Present : Wijayatilake, J.

A. L. T. PIERIS, Appellant, and L. T. P. DE SOYSA, Respondent
S. C. 44/69—C. R. Colombo, 94756/R./E.

Rent Restriction Act—Section 9 (1)—Sub-letting—Proof.

A tenant of rent-controlled premises is not liable to be ejected on the ground of “sub-letting” if the evidence, taken as a whole, shows that the occupants other than the tenant are boarders and not sub-tenants.

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

W. D. Gunasekera, for the defendant-appellant.

D. R. P. Goonetilleke, for the plaintiff-respondent.

Cur. adv. vult.

August 3, 1970. WIJAYATILAKE, J.—

The plaintiff seeks to eject the 1st defendant from the premises No. S, Pallidora Road, Dehiwela, *inter alia*, on the ground that the 1st defendant had since 1965 sub-let a portion of these premises to the 2nd defendant without obtaining his written consent in contravention of S. 9 (1) of the Rent Restriction Act. The plaint was filed on 22.11.66. The 1st

defendant filed his answer on 6.12.67, admitting the tenancy under the plaintiff but denying the averment that he has sub-let the premises to the 2nd defendant. On the same day the 2nd defendant filed his answer through the same Proctor denying that he is a sub-tenant of the 1st defendant.

The question which has arisen in this appeal is whether the 1st defendant sub-let a portion of these premises to the 2nd defendant or whether the 2nd defendant was occupying a portion of these premises not as a sub-tenant but as a boarder. At the trial the 2nd defendant, although he had filed his answer as referred to above denying a sub-tenancy, gave evidence in support of the plaintiff's case and sought to testify that he was in fact a sub-tenant. The learned Commissioner of Requests has very correctly observed that he could give very little credence to his evidence. The 1st defendant called in support two witnesses, one Pearl Goonatillake and one Stembo, his brother-in-law. Both these witnesses have spoken to the fact that the 1st defendant, was running a boarding house and they, including the 2nd defendant, were all boarders occupying different rooms. The learned Commissioner has observed that not much reliance could be placed on their evidence, particularly as they are interested in securing for the 1st defendant a continuity of tenure. Having virtually rejected their evidence the learned Commissioner observes that he has to choose between the version of the plaintiff and that of the 1st defendant. He concludes as follows:—"The testimony of either of them, in my view, was not very impressive; however I am of the view that the 2nd defendant was not a boarder in the premises in suit but a person who had for himself the exclusive use of a portion thereof on the payment of rent."

In my view on the assessment of the evidence by the learned Commissioner it is clear that the plaintiff has failed to discharge the burden of proof in this case. In the light of the Commissioner's observations in regard to the plaintiff and the evidence in support it would be quite wrong to enter into the field of conjecture as the judgment has to rest on evidence led in the case.

As for the evidence led by the 1st defendant it has to be appreciated that this is the best evidence he could have called. On the evidence taken as a whole it is more likely that the occupants were boarders. The case of *Syed Mohamed v. Meera Pillai*¹ cited by learned counsel for the respondent can be distinguished in the context of this case.

I would accordingly set aside the judgment of the learned Commissioner and dismiss the plaintiff's action with costs in both Courts.

Appeal allowed.