

1956

*Present* : Basnayake C.J., and de Silva, J.

M. SAIBO, Appellant, and AMEEN, Respondent

S. C. 86—D. C. Colombo 26827

*Rent Restriction Act, No. 29 of 1948—Section 26—Sub-tenant's right to avail himself thereof.*

Section 26 of the Rent Restriction Act is of no avail to a sub-tenant when the landlord sues him for ejection in a separate action.

**A**PPPEAL from a judgment of the District Court, Colombo.*H. V. Perera, Q.C., with E. R. S. R. Coomaraswamy and E. B. Vannithamby, for defendant-appellant.**H. W. Jayewardene, Q.C., with F. W. Obeyesekere and Walter Jayawardene, for plaintiff-respondent.**Cur. adv. vult.*

April 30, 1956. BASNAYAKE, C.J.—

The plaintiff let on a monthly tenancy premises No. 164, Keyzer Street, Pettah, to one S. N. M. Buhary. As Buhary fell into arrears of rent he sued him and obtained judgment against him. He applied for a writ of possession, and when the Fiscal proceeded to eject Buhary, his servants and all persons claiming under or through him from the premises, the defendant refused to vacate the premises claiming to be in occupation of a portion of the said premises referred to as No. 166 as tenant of Buhary with the knowledge of the plaintiff. In consequence the Fiscal was not able to execute the writ of possession. Next the plaintiff took proceedings under section 325 of the Civil Procedure Code; but without success. Lastly plaintiff commenced these proceedings for ejection on the ground that the defendant was in unlawful possession of the said premises, that he be placed and quieted in possession thereof, and for damages. The defendant *inter alia* pleaded that he was the tenant of the plaintiff and that Buhary was the plaintiff's agent. He also pleaded that till November 1950 he paid rent to Buhary and thereafter to the plaintiff direct and that the plaintiff cannot maintain this action.

The findings of fact of the learned trial Judge are that the defendant had all along admitted that he was a sub-tenant of Buhary the plaintiff's tenant who sub-divided and let portions of the plaintiff's premises without his knowledge to the defendant and two others. He has rejected the defendant's claim that he is a tenant of the plaintiff. In that view of the facts the plaintiff is entitled to succeed.

The sole question for decision in appeal is whether section 26 of the Rent Restriction Act is of any avail to the defendant. In the enactment relating to rent restriction that was law before the Rent Restriction Act No. 29 of 1948 there was no provision corresponding to section 9 which,

subject to any provision to the contrary in any written contract or agreement, forbids a tenant of any premises to which the Act applies to sublet the premises or any part thereof without the prior consent in writing of the landlord. Any violation of the prohibition imposed by the section entitles the landlord to institute proceedings for the ejection of the tenant and all the sub-tenants. It is common ground that Buhary sub-let the premises before 1948. His act of sub-letting was therefore not against the statute and did not permit the landlord to make the act of sub-letting a ground for the termination of a tenancy under the statute.

In the case of *Ibrahim Saibo v. Mansoor*<sup>1</sup> it was held by a Bench of five Judges of this Court constituted under section 51 of the Courts Ordinance that for the purpose of obtaining possession of premises which have been sub-let a landlord may adopt one of three courses :

- (a) join the sub-tenant in an action against the tenant and thereby obtain a decree for the ejection of both,
- (b) if he has sued the tenant without joining the sub-tenant he can obtain a subsequent order for ejection against him under section 327 of the Civil Procedure Code, and
- (c) where the landlord has sued the tenant without joining the sub-tenant he may sue the latter for ejection in a separate action.

In the present action the plaintiff has adopted the third course. Though it is not so expressly stated the full Bench decision also relates to a case in which the sub-tenancies were created before the present Act.

The judgment above cited in discussing the position of a sub-tenant goes on further to state :—

“A few further observations on the position of a sub-tenant under the common law are material to the questions we have discussed. The position of a monthly sub-tenant whose immediate landlord is a monthly tenant is precarious. The tenant can determine the sub-tenancy by giving notice to quit. But the tenant can also by agreement with the landlord terminate the tenancy between himself and the landlord in which event the sole foundation for the sub-tenant's right to occupation crumbles at once and he is liable to eviction by the landlord . . . . .

A sub-tenant cannot complain that the law gives him no further rights of protection because he must be taken to know full well that in entering into a contract of tenancy with a person who is himself a tenant, his right to occupation is fragile ”.

To regard the tenant as the agent of the owner *vis a vis* the sub-tenant or to deem the owner as the landlord of the sub-tenant, as contended for by the appellant, would have the effect of completely negating the provisions of the enactment governing the sub-letting of premises.

<sup>1</sup> (1953) 54 N. L. R. 217.

The construction of section 26 in the way suggested by learned Counsel would confer on the sub-tenant greater rights than the tenant himself has as against the landlord. It would also result in a violation of section 9, which is punishable under section 23, being saved by that section. Such a construction of the enactment is clearly against its scheme, and I find myself unable to assent to such a construction of section 26 more especially as it would have the effect of rendering ineffective other provisions of the enactment.

It is not necessary for the purpose of this appeal to decide the class of cases to which section 26 would apply.

We think that the learned trial Judge was right when he entered judgment for the plaintiff in this case.

The appeal is dismissed with costs.

DE SILVA, J.—I agree.

*Appeal dismissed.*

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