

1956

*Present* : K. D. de Silva, J.

D. B. S. PERERA, Appellant, and D. D. LIYANAGAMA  
*et al.*, Respondents

*S. C. 121—C. R. Colombo, 59,331*

*Landlord and tenant—Partnership—Can it be a tenant?—Trespasser who claims to be tenant—Suit against him by landlord—Jurisdiction of Court of Requests to hear case.*

If a landlord is aware, before he lets his premises to a tenant, that a partnership business is to be carried on in the premises by the tenant and certain other persons, no contract of tenancy arises between the landlord and the partners unless it is agreed between the landlord and the partners that the latter are to be the tenants. Although the partners in their individual capacity can enter into a contract of tenancy, a partnership as such cannot do so.

Where an owner of premises sues a trespasser for ejection and damages and the defendant, without disputing the plaintiff's title to the property, contends that he is the lawful tenant of the plaintiff, the jurisdiction of the Court to try the case does not depend on the value of the premises.

**A**PPPEAL from a judgment of the Court of Requests, Colombo.

*Vernon Wijetunge*, with *D. R. P. Goonetilleke*, for the plaintiff-appellant.

*E. A. G. de Silva*, for the defendants-respondents.

*Civ. adv. vult.*

December 20, 1956. DE SILVA, J.—

In this action the plaintiff sought to eject the two defendants from premises No. 1184, Cotta Road, Welikada, and to recover from them damages for wrongful occupation of the same on the ground that they were trespassers. Admittedly, the premises in question belong to the plaintiff. On February 1, 1949, one Charles Liyanagama a brother of the defendants became the monthly tenant of these premises under the plaintiff at a rental of Rs. 23 per month. Charles Liyanagama conducted a provision store and a bakery business in these premises and the adjacent premises bearing No. 2 which too he had taken on rent from the plaintiff. He continued to pay rent to the plaintiff until his death which event took place in March, 1955. After his death the defendants who claimed to be partners of the business carried on by their deceased brother remained in occupation of the premises. They offered to pay rent to the plaintiff which he refused to accept. However, he accepted payment on the basis of damages from them at the rate of Rs. 23 per month up to the end of November, 1955. He instituted this action on October 13, 1956. The defendants in their answer while admitting that their deceased brother Charles Liyanagama was the tenant of the plaintiff averred

that he had taken the premises in question on rent "for the purpose of the business known as 'Sri Ramya Hotel & Stores' of which the defendants are partners." They also stated that the plaintiff was aware that they were carrying on that business since April, 1953. Their position was that the partnership was the tenant of the premises under the plaintiff. They also contended that the Court had no jurisdiction to entertain this action inasmuch as the subject matter of this action exceeded Rs. 300 in value. It was conceded that the receipts for payment of rent were always issued in the name of Charles Liyanagama. The business carried on in these premises was registered on 6th April, 1953, under the Business Names Registration Ordinance—vide certificate DI. According to this certificate the business was carried on by Charles Liyanagama and his three brothers two of whom are the defendants. Although the business was registered in the year 1953 the plaintiff admitted that a business was carried on in the premises from 1949 and that there was a name-board bearing the words "Sri Ramya Hotel & Stores". He, however, stated that it was only after the institution of this case that he discovered that the business had been registered in 1953. The learned Commissioner held that the defendants had established that this business was carried on in these premises by the four brothers as partners from the year 1949 and that "in the ordinary course of things during this long period of time the landlord should have become aware that the business on these premises was carried on by a partnership, though one partner paid rent as a tenant." He proceeded to state further "in that event he has accepted the relationship that the partnership was the tenant though the rent was paid by one partner." He also expressed a view that if a partner paid rent in his name as a tenant and even if the partnership was not disclosed to the landlord the latter on the death of the tenant cannot treat the surviving partners as trespassers but he must accept them as tenants. I am unable to agree with this view. The tenancy arises from a contractual relationship existing between the landlord and tenant. Even if the landlord is aware before he let his premises to the tenant that a partnership business was to be carried on in the premises by the person taking on the premises on rent and others no contract of tenancy arises between the landlord and the partners unless it was agreed between the landlord and the partners that the latter were to be the tenants. The 1st defendant stated that even during the lifetime of Charles Liyanagama he (1st defendant) paid the rent to the plaintiff and asked for receipts in the name of the partnership but the plaintiff continued to issue receipts in the name of Charles Liyanagama. This is clear proof that the plaintiff was unwilling to accept any persons other than Charles Liyanagama as his tenant. The learned Commissioner was wrong in holding that the partnership was a tenant because a partnership is not a "legal persona". Although the partners in their individual capacity can enter into a contract yet a partnership as such cannot do so. Therefore on the death of Charles Liyanagama the contract of tenancy ceased to exist and the plaintiff is entitled to treat the other partners who remained in occupation of the premises as trespassers. The question of jurisdiction raised by the defendants is not free from some difficulty. The 1st defendant stated that the

premises in question are worth Rs. 10,000. That evidence stands uncontradicted. It was contended therefore on behalf of the defendants that the Court of Requests had no jurisdiction to entertain this action. On the other hand the plaintiff's title to the property was not disputed. What the defendants contended was that they were the lawful tenants of the plaintiff. The issue that had to be decided therefore was whether or not a contract of tenancy existed between the plaintiff and the defendants. That was a question which a Court of Requests was entitled to adjudicate upon. I would accordingly hold that the Court of Requests had jurisdiction. I would therefore allow the appeal and enter judgment for plaintiff as prayed for with costs provided that the damages would be recoverable only from 1st December, 1955 as the plaintiff has received payment up to the end of November, 1955. The plaintiff would be entitled to the costs of this appeal.

*Appeal allowed.*

