

1955

Present : Swan J.

A. CHELLIAH, Appellant, and C. M. KADIRAVELU,
Respondent

S. C. 26—C. R. Badulla, 14,204

*Rent Restriction Act—Section 13—Tenant in arrears of rent—Action in ejectment—
Notice to quit is condition precedent.*

Section 13 of the Rent Restriction Act does not render notice to quit unnecessary to determine a contract of tenancy where the tenant is in arrears of rent.

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

N. Kumarasingham, for the defendant appellant.

H. W. Tambiah, with *H. de Silva*, for the plaintiff respondent.

Cur. adv. vult.

May 19, 1955. SWAN J.—

In this case the plaintiff-respondent sued the defendant-appellant for arrears of rent and ejectment. In the plaint notice to quit was pleaded. It was specifically denied in the answer. Apparently at the commencement of the trial it was argued that no notice to quit was necessary for during the course of the trial the following issue was raised by the proctor who appeared for the defendant :—

(4) Can the plaintiff maintain this action for ejectment in the absence of notice to quit determining tenancy ?

At the trial no notice to quit was produced. The learned Commissioner entered judgment for the plaintiff as prayed for with costs, holding that no notice to quit was necessary because the appellant was in arrears of rent.

Mr. Kumarasingham argued that tenancy can only be determined by notice to quit and that the Rent Restriction Act does not give the landlord any greater rights if the tenant is in arrears of rent. His contention was that section 13 of the Act merely provides that no action in ejectment can be instituted unless the Rent Restriction Board had authorized such an action. There is a proviso to the section that the authorization of the Board is not necessary in certain cases, one of which is when the tenant is in arrears of rent.

Mr. Tambiah maintained that the view taken by the learned Commissioner was right. He relied on the judgment of Basnayake J. in the case of *Wimalasuriya v. Ponniah*¹. His argument was that just as a landlord can sue a tenant in ejectment without notice to quit where the

¹ (1951) 52 N. L. R. 191.

tenant has sublet the premises in contravention of section 9 of the Act, the landlord can institute an action in ejection where the tenant is in arrears of rent. Without expressing any opinion as to the correctness or otherwise of the judgment in *Wimalasuriya v. Ponniah*¹ I think that section 13 only refers to circumstances when the authorization of the Board is unnecessary for the institution of an action in ejection. I do not think it can be construed to mean that notice to quit is unnecessary to determine a contract of tenancy where a tenant is in arrears of rent.

The appeal as far as the claim for ejection is concerned is allowed. Decree will be entered for the plaintiff-respondent for Rs. 210 and costs in the lower court. The defendant-appellant will be entitled to the costs of appeal. The defendant-appellant will be given credit for any amount deposited to the credit of this case as well as amounts paid to the credit of Case No. 13659 C. R. Badulla on account of rent claimed in this action.

Appeal allowed.



¹ (1951) 52 N. L. R. 191.