

1946

Present : Wijeyewardene S.P.J.

NATHURMAL GIANCHAND *et al.*, Appellants, and
MAKATY, Respondent.

112—C. R. Colombo, 99,765.

Landlord and tenant—Premises let to firm of partners—Notice to quit addressed to name of firm—Validity of notice.

Where a landlord lets premises to partners carrying on business under a firm name a notice to quit addressed to the name of the firm and not to the individual partners would be valid and sufficient notice.

A PPEAL from a judgment of the Commissioner of Requests, Colombo.

M. I. M. Haniffa (with him *M. Abdulla*), for the defendants, appellants.

No appearance for the plaintiff-respondent.

Cur. adv. vult.

July 23, 1946. WIJYEWARDENE S.P.J.—

The three defendants are carrying on business in partnership as dealers in textiles under the name of G. Khanchand & Bros., at No. 213A, Second Cross street, Pettah, from which the plaintiff, their landlord, seeks to eject them in this action.

The Commissioner of Requests entered judgment for the plaintiff but directed that the writ of ejectment should not issue till August 31, 1946. The defendants have appealed from that judgment.

Two questions arise for determination on this appeal :—

- (1) Is the notice to quit (D1 of July 16, 1945) given by the plaintiff a valid and sufficient notice ?
- (2) Is the plaintiff barred by the provisions of the Rent Restriction Ordinance, No. 60 of 1942, from obtaining a decree of ejectment ?

The notice D1 was addressed to "G. Khandchand Brothers" asking them to quit the premises on August 31, 1945. It was delivered at No. 213A, Second Cross street, Pettah. A copy of the notice was also sent to the Proctor for the defendants. It was contended for the defendants-appellants that the notice was bad as it was not addressed to the individual partners. I am unable to uphold that contention. The evidence led by the defence shows that all the defendants were aware of the notice and, in fact, that they all asked their Proctor to send a reply to that notice on July 20, 1945. Moreover, under our law a firm is not a separate and distinct legal persona. The firm name is a conventional name applicable to the persons who are partners of the firm at the time when the name is used. As Underhill puts it (*vide Principles of the Law of Partnership, Fifth Edition, page 58*) the firm name is recognised as a convenient symbol for collectively designating all the partners just as one uses "a" and "b" in algebraic computations to designate known quantities which it would be inconvenient to specify at length. I may also refer in this connection to the observations made in *Hautrey v. Beaufront, Ltd.*¹ where the Court had to consider the sufficiency of a

¹ (1946) 1 Kings Bench 280.

notice to quit addressed to the directors of the Corporation and not to the Corporation itself, which was the tenant of the premises in question.

I shall proceed now to consider the second point raised by the appellants' Counsel.

The plaintiff is a lessee of the four bout ques Nos. 207, 209, 213A and 213, Second Cross street, Pettah. He carried on his trade as a dealer in coriander, chillies, &c., at Nos. 207, 209 and 213A from about 1941 and gave No. 213 on rent to a third party. In January, 1943, he left for India having sold all his stock in trade, and remained there till about July, 1945. In the meantime an agent of his took charge of the boutiques and gave them on rent to various persons.

The defendants themselves have been carrying on business as dealers in textiles from 1941. The first place of business was No. 213, Main street, which they had to vacate in 1944 on receiving twenty-four hours' notice from the Government Agent, Western Province, who wanted the premises for the Textile Control Department. Compelled to make arrangements at such short notice the defendants removed their stock to a place in Second Cross street which was not at all suitable for their business. After a few months they took the premises in question—No. 213A, Second Cross street—from an agent of the plaintiff at a rental of Rs. 50 a month as from March 1, 1946. They paid three months' rent in advance before they went into occupation and further gave two cheques for Rs. 1,000 and Rs. 3,000 on an undertaking by the plaintiff's agent to give a notarial lease of the boutique. The cheque for Rs. 1,000 has been cashed but the defendants stopped payment of the cheque for Rs. 3,000 when they found the plaintiff's agent was delaying to give a lease of the boutique. When the plaintiff returned to Ceylon in July, 1945, he sent D1 to the defendants asking them to quit the premises at the end of the following month and demanding payment of the arrears of rent, ignoring all the payments made by the defendants. Fearing that the plaintiff may question the validity of the payments already made, and unwilling to risk an ejection from the premises on the ground that they had committed default in payment of the rent, the defendants forwarded cheques to the plaintiff for rent from March 1, 1946.

Giving evidence in Court the plaintiff stated as follows his reasons for wanting possession of the boutique :—“ Whatever articles are available in the market I propose to purchase and sell in these premises”. He admitted that he had no stock at present. On the other hand it is not disputed that the defendants are actively engaged in the textile trade and that they have stock worth about Rs. 20,000. The defendants have stated further in their evidence that they failed to find any other place for their business though they made many efforts to find one after they received the notice D1.

Taking all the relevant facts into consideration I am not satisfied that the premises are reasonably required by the plaintiff for the purposes of his trade.

I allow the appeal and dismiss the plaintiff's action with costs here and in the Court below.

Appeal allowed.