

1954

Present : Fernando A.J.

L. W. A. VINCENT, Appellant, and K. G. SUMANASENA, Respondent

*S. C. 153—C. R. Kandy, 9,613**Rent Restriction Act, No. 29 of 1948—Section 14—Continuance of original contract of tenancy—Retrospective force.*

During the pendency of an action for ejection under the Rent Restriction Act the tenant must continue to pay rent as it falls due. Failure to do so may, by virtue of the retrospective force of section 14 of the Act, render him liable to be sued again for ejection, in a subsequent action, on the ground of non-payment of rent.

APPPEAL from a judgment of the Court of Requests, Kandy.

H. W. Jayewardene, with *D. R. P. Goonetilleke*, for the plaintiff appellant.

No appearance for the defendant respondent.

Cur. adv. vult.

June 7, 1954. FERNANDO A.J.—

Plaintiff instituted this action on November 6th, 1952, for the ejectment of his tenant, the defendant, on the ground that rent for June to September 1952 had not been paid. Plaintiff had on September 17th, 1952 given notice to the defendant to quit the premises on or before October 31st, 1952. There had earlier been another ejectment action (C. R. No. 9136) between the same parties and in respect of the same premises on the ground of non-payment of rent for some earlier period and that action had been dismissed on 9th September, 1952. It is clear therefore that the arrears of rent on which the present action is based, were in respect of a period during which the first action was pending. The plaintiff apparently served his second notice to quit (on which the present action is based) eight days after the dismissal of his first action. On 26th September 1952 the defendant tendered to the plaintiff a cheque for Rs. 200 in payment of the rent for the four months in respect of which he was in arrears—namely June to September 1952. This cheque was returned by the plaintiff on November 7th, 1952, and immediately thereafter the defendant deposited the sum of Rs. 200 to the credit of the former action which had already been dismissed.

The learned Commissioner dismissed the present second action also on the ground that the defendant had not been in arrears for the months of June to September 1952. The learned Commissioner does not in fact hold that the rent for these months was paid before they fell into arrear, and his view that the defendant was not in arrears of rent is based upon an interpretation of Section 14 of the Rent Restriction Act. Section 14 of the Act provides that, "where an action for the ejectment of any person from any premises occupied by him as a tenant is dismissed by any Court by reason of the provisions of this Act, his occupation of those premises for any period prior or subsequent to the dismissal of such action shall, without prejudice to the provisions of this Act, be deemed to have been or to be under the original contract of tenancy".

The effect of this Section is that when a plaintiff's action for ejectment is dismissed, then, despite the purported termination of the tenancy by the landlord's prior notice, the original contract of tenancy is kept in force retrospectively, so that in the present case by reason of dismissal of action No. C. R. 9136, the original contract of tenancy between the plaintiff and defendant must be considered as though it had never been terminated. Although the effect of the declaration in Section 14 is retrospective, nevertheless the parties would not know that such a declaration is applicable to their case until the action is in fact dismissed. Apparently for this reason, the learned Commissioner seems to think that the plaintiff cannot rely on the failure of the defendant to pay rent for the period during which the first action No. C. R. 9136 was pending. In short according to the learned Commissioner, "the rents due from a tenant for the period during which an action against him was pending could be described as arrears of rent only after the landlord's action is dismissed".

In my opinion the judgment is based upon an incorrect view of the law. Undoubtedly the effect of the dismissal of the first action was to confer retrospectively on the tenant (by reason of S. 14) his rights and status under the original contract of tenancy; but equally so there would be imposed on him also the obligations of the tenant. When a tenant defends an ejection action he should be aware that *either* he would be liable in damages for his occupation during the pendency of the action, if the plaintiff is ultimately successful, *or* he would by virtue of S. 14 retrospectively continue to be tenant, if the plaintiff fails. If therefore he wishes to secure to himself the full benefit which S. 14 is intended to confer he must regard himself as a tenant during the pendency of the action and pay the rent as it falls due, or else deposit it in Court to the credit of the action. If he does not do so he runs the risk, as in the present case, that the plaintiff can immediately serve him with fresh notice forthwith after the determination of the first action.

I accordingly hold that because of the failure of the defendant to pay into Court in due time the rent for the months of June, July and August 1952 he was in arrears of rent for those months on September 17th, 1952, when notice to quit was given to him. The plaintiff must therefore succeed in his action for ejection, and decree should be entered accordingly in his favour. The plaintiff will also be entitled to damages at the rate of Rs. 50/- per month until the date of the ejection of the defendant. Credit will of course be given to the defendant for any payments actually made in the interval. The defendant must bear the costs in the Court of Requests as well as the costs of this appeal.

Appeal allowed.
