

1957

Present : H. N. G. Fernando, J.

SUNIL HAMY, Appellant, and S. D. WIJESEKERA,
Respondent.

S. C. 315—C. R. Colombo, 59,994.

Rent Restriction Act, No. 29 of 1948—Section 13 (1) (d)—“Residing”.

A tenant cannot be ejected under section 13 (1) (d) of the Rent Restriction Act on the ground that a person residing in the premises in question has been convicted of using the premises for an illegal purpose unless it is shown that that person had his actual place of residence, whether permanently or temporarily, in the premises.

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

Sir Lalita Rajapakse, Q.C., with *A. Karunatileke*, for the defendant-appellant.

G. T. Samerawickreme, for the plaintiff-respondent.

Cur. adv. vult.

July 16, 1957. H. N. G. FERNANDO, J.—

The only ground upon which the plaintiff has succeeded in this action for ejection is that one Gunasena a son of the tenant was convicted of an offence under the Betting on Horse Racing Ordinance committed on 16th October, 1954, an offence which constitutes the use of the leased premises for an illegal purpose within the meaning of section 13 (1) (d) of the Rent Restriction Act, No. 29 of 1948.

Section 13 (1) (d) is applicable where “the tenant or his sub-tenant or any person residing with him in the premises . . .” has been convicted of using the premises for an illegal purpose, and the contention for the defence is that Gunasena was not a person referred to in the section.

The evidence upon which the learned Commissioner relied in regard to this point was that of Police Constable Samaranayake who took part in the raid and detected the commission of the offence by Gunasena. According to this evidence he had seen Gunasena on the premises in question on several occasions over a long period, but the witness did not know Gunasena's place of residence. The only evidence as to the place of residence of Gunasena was that of the defendant herself who stated that although Gunasena had lived with her at No. 231, the premises in question, he had for some time been living on land opposite those premises. Gunasena's rice ration book had been issued in respect of No. 233, the tenant of which is another son of the defendant. On this evidence the Commissioner was unable to hold that Gunasena actually resided on the premises in question but, taking other factors into account such as that Gunasena was intimately connected with the business transacted at No. 231, he held that Gunasena must be deemed to be a person residing or lodging at the premises.

While there are decisions which hold that a person may have two or more places of residence and may be regarded for the purposes of certain statutory provisions to be residing in a place notwithstanding that he does not actually sleep there, I do not think that in the present context the word “residing” was intended to have a meaning different from its ordinary connotation. In the context of the expression “a person who is residing or lodging with” the tenant, I think the intention of the legislature was to refer only to persons who have their actual places of residence whether permanently or temporarily in the premises.

The plaintiff has therefore failed to make out a ground for his action for ejection. The appeal is allowed with costs in both Courts.

Appeal allowed.