

FREUDENBERG v. KRISTNAN.

C. R., Colombo, 12,814.

1901. *Small Tenements Ordinance, 1882—Meaning of small tenement.*

*June 18 and
July 4.*

Per LAWRIE, A.C.J.—A small tenement need not be a single room occupied by one tenant. Many rooms may constitute one tenement, provided that the tenants therein do not pay more than Rs. 20 a month.

Where a tenement included thirteen rooms, and eleven of them were occupied by tenants paying in all Rs. 20 a month, and the remaining two rooms, the rental of which were estimated to be Rs. 5, were occupied by the defendant who had the lease of the entire tenement,—

Held, that the landlord could not proceed under the Small Tenements Ordinance, but must seek his Common Law remedy. .

THIS was an application for a rule *nisi* under the Small Tenements Ordinance of 1882. The applicant sued the respondent for the recovery of a tenement consisting of a row of rooms standing on an allotment of land bearing Municipal assessment number 2 at Mill street, Hulftsdorp. The respondent admitted that he was a monthly tenant of the applicant, and that

he received due notice to quit the said premises, but he refused to deliver up possession till the applicant compensated him for the substantial improvements which he had effected by building on the land several tiled rooms at a cost of Rs. 1,600. It appeared that originally there was only one room on the land, but the respondent had put up thirteen more. The applicant denied that these rooms were put up with his knowledge or consent, but he agreed to allow the respondent to remove all the materials used in the building of the said rooms.

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The Commissioner (Mr. W. H. Moor) gave judgment as follows:—

“ The application is not to recover the one room originally rented to defendant, but to acquire possession of the row of rooms which he subsequently erected on the land, comprising several tenements. I hold that the Ordinance does not apply. I dismiss the application with costs.”

The applicant appealed.

Van Langenberg, for appellant.

Bawa, for respondent.

Cur. adv. vult.

4th July, 1901. LAWRIE, A.C.J.—

The learned Commissioner holds that the Small Tenements Ordinance does not apply, why, he does not explain. I gather that the Ordinance does not apply, because the applicant wishes in this proceeding to eject the respondent, not from one tenement only, but from several tenements. He seems to hold that the applicant could proceed against the respondent as regards the original room, but that he cannot include other rooms or tenements since built or added. That, I think, is met by the affidavit of the tenant respondent, where he treats all the rooms as one tenement bearing the No. 2, Mill street.

But Mr. Bawa urged that this tenant is an ingorant man, and he must not be bound by his admission (if admission it be) that there is one tenement No. 2, Mill street. Mr. Bawa contended that there were many tenements, not one tenement.

I am not prepared to hold that a small tenement in the sense of the Ordinance must be a single room occupied by one tenant. I do not see why it should not apply to many rooms constituting one tenement, subject to this condition, that the tenement cannot be let for more than Rs. 20 a month.

Here Rs. 4 is all that the defendant pays to the landlord for the whole tenement, but he alleges that since he made the

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agreement to occupy and to pay rent, he has greatly improved the premises. If he proves that the rent is now more than Rs. 20 a month, he could take the case outside the Ordinance.

I will not delay this by sending the case back. The parties will agree as to the present rental. If it be below Rs. 20 a month, the action under the Small Tenements Ordinance will be sustained. If it be above Rs. 20 a month, the plaintiff will be referred to his remedy outside the Ordinance.

Since writing the above Mr. Bawa produced an affidavit by the defendant that eleven of the thirteen rooms are occupied by tenants who pay in all Rs. 20 a month, while the remaining two rooms are occupied by the defendant, and he estimates the rental of these to be Rs. 5 Mr. Van Langenberg was not in a position to deny this.

Therefore I dismiss this proceeding under the Small Tenements Ordinance, leaving the landlord to his Common Law remedy and the defendant to his defences thereto.

