1958 *Present :* **Sinnetamby, J.**

S. P. K. KADER MOHIDEEN & CO., LTD., Appellant, *and* S. N. NAGOOR GANY, Respondent

S. C. 73—C. R. Colombo, 45,586

Rent Restriction Act, No. 29 of 1948—Section 13 (c)—" Reasonable requirement "—Power of Court to consider events that occur subsequent to date of institution of action—Power of Court to delay execution of judgment.

Where a landlord seeks to eject his tenant on the ground that the premises let are reasonably required for his own use and occupation, in terms of section 13 (*c*) of the Rent Restriction Act, the Court cannot take into consideration events that occur subsequent to the date of the institution of the action. Accordingly, the Court cannot take into consideration the fact that, after the date of the institution of the action, the plaintiff's landlord has, in another action, obtained writ of ejectment against the plaintiff entitling the plaintiff's landlord to eject the plaintiff from the premises of which the plaintiff is tenant.

Ismail v. Herft (1948) 50 N. L. R. 112, not followed.

Obiter : A Court of first instance has no power to stay for any stated period the execution of judgment, except with the consent of the parties.

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

Sir Lalita Rajapakse, Q.C., with *N. C. J. Rustomjee* and *D. C. W. Wickremasekera*, for Defendant-Appellant.

H. W. Jayewardene, Q.C., with *A. Devarajah* and *C. P. Fernando*, for Plaintiff-Respondent.

Cur. adv. vult.

July 23, 1958. SINNETAMBY, J.—

The plaintiff instituted the present action against the defendant for ejectment from premises No. 152, Old Moor Street, of which the defendant had been in occupation for a period of about 13 years. The plaintiff was a recent purchaser. The premises in suit were used as a store and the plaintiff who occupies premises No. 158, Old Moor Street, with a family of 27 persons desired to move into No. 152, Old Moor Street, with his family. The main issue on which the parties went to trial was whether the premises in suit were reasonably required by the plaintiff as a residence for himself and the members of his family. The learned Commissioner has answered the issue in the affirmative and, in doing so, was much influenced by the fact that in C. R. Case No. 52,424 the plaintiff's landlord Jamal had obtained writ of ejectment against the plaintiff entitling Jamal to eject the plaintiff from premises No. 158 on the 30th November, 1956. The appeal is against this decision.

The present action was instituted by a plaint dated 11/5/53 which was filed and accepted by Court on the 22nd May, 1953. The C. R. Case No. 52,424 was filed thereafter by a plaint dated 2/6/54. Decree in that case was entered against the present plaintiff on 6/12/54. The question that immediately arises is whether in dealing with the main issue on which the parties went to trial the Commissioner was entitled to consider the effect of the decree in C. R. Case No. 52,424. It is impossible to state what view the learned Commissioner would have taken upon the issue framed but for the evidence led in regard to this decree.

Learned Counsel for the respondent submitted that it was well within the powers of the learned Commissioner to consider facts that came into existence after the institution of the action and in support of his contention relied upon the case of *Ismail v. Herft*[1]. That was an action instituted when the now repealed Rent Restriction Ordinance of 1942 was in operation. Section 8 (*c*) of the repealed Ordinance is in identical terms as section 13 (1) (*c*) of the Act now in force, namely, the Rent Restriction Act No. 29 of 1948. The facts of that case were as follows : the plaintiff had successfully obtained a decree for ejectment against the defendant on the ground that the premises in question in that case were reasonably required for the use and occupation as a residence for the plaintiff and his family. After decree was entered and after the appeal was lodged by the defendant the plaintiff died leaving his widow and four children. His executor was duly substituted. The learned Appeal Judge took the

[1] (*1948*) *50 N. L. R. 112.*

view that the untimely death of the plaintiff before the issue of the writ resulted in the " ground being entirely cut from beneath the feet of the plaintiff's case ". Dealing with the right of the plaintiff to occupy the premises the learned Judge observed :

> " Until he had actually entered into occupation of the premises which he never did, this was not a right which would be transmissible to his heirs or successors, being personal to himself and founded on his personal requirements. It is certainly not a right which enures for his executor, for his executor's requirements as to residence are not the plaintiff's. Nor can the learned Commissioner's judgment be construed as holding that the premises were proved to be reasonably required as a residence for the plaintiff's family, apart from the plaintiff himself. The plaint did not allege this (the words are " for the plaintiff *and* his family ") and the Commissioner's judgment made two things quite clear. First, as I have already said, the respective needs of the plaintiff and of the defendant for the premises were considered to be about equally balanced, so that the fact of the plaintiff's being the landlord had to be brought in to tip the scale in his favour. "

The learned Judge went on to hold that the time at which the conditions set out in section 8 (*c*) must be shown to exist is the time when the Court is required to make the ejectment order ; and, in cases where there is an appeal, when the Appeal Court delivers its order. On this footing the appeal was allowed as, in the opinion of the learned Appeal Judge, in the altered circumstances the premises could not be regarded as reasonably required for the plaintiff and his family. With this view of the learned Appeal Judge, with all respect, I find myself in total disagreement.

Prior to the enacting of the Rent Restriction Ordinance, under our common law, a landlord was entitled to terminate the contract of tenancy by a valid notice to quit. Once notice was admitted or established the tenant had no defence and was obliged to leave. But with the introduction of the Rent Restriction Ordinance a curb was placed on the landlord's common law rights and he was debarred from instituting an action in ejectment and the Court was prevented from entertaining it unless the Assessment Board had in writing authorised the institution of the action. It is thus manifest that without such authorisation the action cannot be instituted. Then comes the proviso which dispenses with the authorisation of the Board if the stipulations embodied in (*a*), (*b*), (*c*) and (*d*) or any one of them are fulfilled. The conditions enumerated in these clauses must, like the authorisation of the Board, be in existence before the action is instituted. That is the view that our Courts have consistently taken in the interpretation of section 8 of the Ordinance No. 60 of 1942 and of section 13 of the Rent Restriction Act No. 29 of 1948. Indeed, at one time it was an open question as to whether the Court could embark upon the adjudication of the common law rights of the parties to terminate the contract of tenancy without first holding a preliminary inquiry and satisfying itself that one or more of the conditions imposed by section 8 of the Ordinance exist. It is only if the Court was so satisfied, it was suggested, that the Court had jurisdiction to adjudicate on the main

question relating to the termination of the tenancy. This matter however, was laid at rest by a Divisional Court decision in *Maroof v Leaff* [1].

Section 13 (1) of the Rent Restriction Act is in the following terms :—

"Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises to which this Act applies shall be instituted in or entertained by any Court, unless the Board, on the application of the landlord, has in writing authorised the institution of such action or proceedings :

Provided, however, that the authorisation of the Board shall not be necessary, and no application for such authorisation may be entertained by the Board, in any case where—

(*a*) rent has been in arrears for one month after it has become due ; or

(*b*) the tenant has given notice to quit ; or

(*c*) the premises are, in the opinion of the Court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord, or for the purposes of the trade, business, profession, vocation or employment of the landlord ; or

(*d*) . . . . ."

The plain meaning of these provisions, it seems to me, is that a Court is restrained or prevented from entertaining an action unless one at least of the provisions of the proviso has been fulfilled. The Divisional Bench decision, already referred to, declared that the Court may decide this question in the same action itself and it is not necessary that there should first be a preliminary inquiry in regard to it. If the conditions referred to in the proviso or any one of them do not exist then the Court cannot proceed any further. In this view of the matter I fail to see how it is possible to take into consideration events subsequent to the institution of the action to decide the very point that has to be determined even before the plaintiff's action can be entertained. Quite apart from the consideration of the provisions of section 13 of the Act or section 8 of the Ordinance there is the general principle of law that rights of parties must be determined as at the date of action—vide *Silva v. Fernando* (*P. C.*) [2]. The Privy Council decision embodies a principle that has been consistently followed in our Courts from very early times. For instance, in *Ponnamma v. Weerasuriya* [3] where the plaintiff in an action for declaration of title to a land obtained a Fiscal's transfer upon which he based his title nine days after the action was instituted although the Fiscal's sale was prior to the institution of that action it was held that the plaintiff had no title at the date of action and his action must fail. In several cases where action was instituted by an assignee from the purchaser at a Fiscal's sale for declaration of title to land and it was established that he had not obtained the Fiscal's transfer at the date of

[1] *(1944) 46 N. L. R. 25.* [2] *(1912) 15 N. L. R. 499.*
[3] *(1908) 11 N. L. R. 217.*

assignment but had obtained it prior to the date of action it was held that he was entitled to succeed. *Abubakker v. Kalu Ettena* [1] and *Selohamy v. Raphiel* [2].

If the trial Court in the present case had not taken into consideration the existence of the decree in C. R. Case No. 52,424 it is not possible to say that it would have come to the same conclusion in regard to the reasonable requirement of the premises by the plaintiff; nor is this Court in a position to do so. In the circumstances the only course open is to send the case back for retrial before another Judge.

I observe in this case that the learned trial Judge after holding upon the issues in favour of the plaintiff had directed that writ of ejectment do not issue till 30/11/56. I should like to observe, as I did in an earlier case, that a Court of first instance has no power to deny or delay a successful plaintiff from enjoying the fruits of his judgment except by consent of the parties. If upon the issues a trial Judge finds in favour of the plaintiff there is no provision in law which empowers him in his discretion to direct that writ of execution should not issue for any stated period. The power of a Court of Appeal to do this, however, has been recognised and established in several cases that have come up in appeal and I wish to say no more about it.

I accordingly set aside the order of the learned Commissioner and send the case back for retrial before another Judge. The costs of appeal and of the abortive trial will be costs in the cause.

Order set aside.