

1962

Present : Herat, J.

E. DEVAIRAKKAM, Appellant, and C. D. SAMARASINGHE,
Respondent

S. C. 114 of 1961—C. R. Colombo, 72098

Rent Restriction Act—“ Sub-letting ”—Business carried on by tenant on the premises let—Effect of lease of the business.

Where a tenant of rent-controlled premises, who carried on a business therein, leased the business to another person and moved on to other premises, where he opened a new business—

Held, that the lease of the business did not amount to sub-letting of the premises in which the business was carried on.

Charles Appuhamy v. Abeysekera (1954) 56 N. L. R. 243, followed.

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

S. Sharvananda, for the 1st Defendant-Appellant.

Nimal Senanayake, for the Plaintiff-Respondent.

October 4, 1962. HERAT, J.—

The circumstances in which the appeal arises are as follows: the plaintiff respondent admittedly let certain premises in Galle Road, Dehiwela, to the 1st defendant-appellant, who carried on a business of oilman stores and dealer in provisions under the name of Jayarajan & Co.

The deplorable communal riots of 1958 caused the 1st defendant-appellant to lease the business Jayarajan & Co. to the 2nd defendant-appellant and to move on to certain other premises at Bambalapitiya, where the 1st defendant-appellant opened a new business.

One can understand this move on the 1st defendant-appellant's part. The premises at Dehiwela were certainly more isolated from the point of view of the community to which the first defendant-appellant belonged than the premises in Bambalapitiya. However, the plaintiff-respondent sought to recover the possession of the Dehiwela premises on the ground that although they were protected premises within the meaning of the Rent Restriction Law the 1st defendant-appellant, without the plaintiff's consent in writing being first obtained, had sub-let the same to the 2nd defendant-appellant.

The question is whether, in fact, the transaction which the 1st defendant-appellant entered into with the 2nd defendant-appellant was a transaction of sub-letting in the eyes of the law? The transaction between these two parties is embodied in the document D1 and a careful perusal of that with a simple knowledge of the English language clearly convinces anyone who reads it that it is not sub-letting, but a mere lease of the business carried on at Jayarajan & Co. by the 1st defendant-appellant to the 2nd defendant-appellant. This is confirmed by the further fact which transpired from the evidence that no alteration was made in the Business Names Register of Jayarajan & Co.

In his brilliant judgment in *Charles Appuhamy v. Abysekera*¹, the late Mr. Justice Nagalingam with a similar set of facts sets out lucidly the law on a point like this and the considerations governing in deciding whether a transaction of this nature is sub-letting or merely a lease of the business carried on. It appears that this judgment was cited in the court of first instance but for some reason best known to Providence it has not been correctly applied.

I hold that the construction of the document D1 and attendant circumstances as appearing from the evidence clearly establish that what the 1st defendant-appellant did was merely to let the business carried on by her, to the 2nd defendant and that it is not sub-letting.

I, therefore, set aside the judgment of the learned Commissioner of Requests. I allow the appeal with costs and dismiss the plaintiff-respondent's action in the court below with costs.

Appeal allowed.
