

1963

Present : Sri Skanda Rajah, J.

ANDIRIS APPUHAMY *et al.*, Appellants, and D. B. M. KURUPPU,
Respondent

S. C. 116 of 1961—C. R. Colombo, 74886

Rent Restriction Act—Business carried on by a tenant in premises let—Sub-letting of premises under cover of lease of the business—Liability of tenant and sub-tenants to be ejected.

Where a tenant who carried on a business in a portion of rent-controlled premises purported to lease out the "business" to a third party but, according to the evidence, the transaction was in reality sub-letting of a distinct portion of the premises—

Held, that the landlord was entitled to eject the tenant and sub-tenants on the ground of sub-letting.

¹ (1951) 53 N. L. R. 374, 46 O. L. W. 6.

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

H. V. Perera, Q.C., with *N. E. Weerasooria (Jnr.)*, for 1st, 2nd and 4th Defendants-Appellants.

C. Ranganathan, with *S. C. Crossette-Tambiah*, for Plaintiff-Respondent.

Cur. adv. vult.

March 15, 1963. SRI SKANDA RAJAH, J.—

The plaintiff-respondent (hereinafter referred to as the landlord) let to the first defendant-appellant (hereinafter referred to as the tenant or as the first defendant) premises bearing assessment No. 11 at a monthly rental of Rs. 60. In these premises the tenant was carrying on a sundry boutique in one portion, a textile business in another portion and a hotel business, named Ajantha Hotel, in a third portion. It is clear from the evidence of the landlord as well as that of the tenant that each of these three portions has a separate entrance.

On 10th August, 1959, the tenant and the second defendant entered into the agreement 1D1, the relevant portions of which are :—

“ AND WHEREAS the party of the First Part hath agreed with the party of the Second Part to lease out the said business together with the furniture, fittings and other things fully described in the List annexed hereto for a term or period of Four Years commencing from the Fifteenth day of August, One Thousand Nine Hundred and Fifty-Nine subject to the terms covenants and conditions hereinafter contained.

NOW THIS INDENTURE WITNESSETH AS FOLLOWS :—

1. That the party of the First Part shall as from the 15th day of August, 1959 deliver unto the party of the Second Part the aforesaid business called and known as “ Ajantha Hotel ” (Only the Tea Kiosk, exclusive of the Textile and Sundry boutique) together with the furniture and fittings appertaining thereto and fully described in the list annexed hereto.

2. That the party of the Second Part shall at the execution hereof deposit with the party of the first part a sum of Rupees One Thousand (Rs. 1,000) as five months rent in advance which sum shall be set off against the rent for the last five months and shall also pay a sum of Rupees Two hundred (Rs. 200) per month, the first of such payments to be made on or before the 15th day of September, 1959.

3. That the party of the Second part shall pay during the said term all the Electricity bills in respect of the aforesaid Hotel.

4. The party of the First part shall and will pay house rent in respect of the aforesaid hotel and obtain licence in his name.

5. That the party of the First part shall and will during the aforesaid term of four years cause or procure the party of the Second Part to carry on the business without any interruption by the party of the First Part or any other person or persons lawfully claiming under or in trust for him.

-6. In the event of the party of the Second part finding it unable to carry on the business he shall give the party of the First part Five months' notice in writing and shall be at liberty to terminate the said business thereafter."

The landlord filed this action on the basis that the tenant had sub-let a portion of the premises in contravention of the provisions of the Rent Restriction Act and, therefore, he is entitled to eject the tenant and sub-tenants.

Mr. H. V. Perera has strenuously contended that there was no letting and hiring of premises, but only a "lease" of the hotel business or only a granting of the privilege to carry on the hotel business and that the delivery of possession of the premises was merely ancillary to the "lease" of the hotel business. This argument was based on the judgments in the cases of *Charles Appuhamy v. Abeysekera*¹, *Jayasinghe v. Goolam Hussein*², which followed the earlier decision, and *Swami Sivagnananda v. The Bishop of Kandy*³. Particular emphasis was laid on a passage at p. 246 in the first of these judgments. His contention was that the second defendant was not a contractual tenant of the first defendant. He further sought to distinguish the facts of this case from those in the case of *Nicholas Hamy v. James Appuhamy*⁴. He also invited me to go only by the document 1D1, drawing attention to the fact that it does not contain a description of any immovable property. His submission was that this omission strongly supported his contention.

Mr. Renganathan, on the other hand, invited me to consider the circumstances leading up to the execution of 1D1, the conduct of the first and second defendants and the oral evidence in the case along with 1D1, which, in his submission, was a type of pretence or blind or ruse commonly adopted to circumvent the provisions of the Rent Restriction Act.

The Right Honourable Sir Henry Slesser, P.C., sometime one of Her Majesty's Lords Justices of Appeal says, "It is a sign of an incompetent lawyer or Judge that he is over-impressed by citation of particular authority": *The Art of Judgment* (1962) at p. 28. Lord Mansfield said, "Precedents serve to illustrate principles". To take the document alone into consideration, as was done in the case of *Charles Appuhamy v. Abeysekera* (supra), would be to be led into error. It should be remembered that in that case the action was by the landlord against the alleged tenant and not one by the landlord against his tenant alleging that the latter had sub-let a portion of the premises, as in this case. The correct approach would be to examine the facts and circumstances

¹ (1954) 56 N. L. R. 243.

² (1955) 56 N. L. R. 381.

³ (1953) 55 N. L. R. 130.

⁴ (1950) 52 N. L. R. 137.

of each case in order to ascertain whether they fall within the principle relied on by counsel.

Witness Piyadasa Perera was the one who arranged the transaction between the tenant and the second defendant. He says, "It was I who arranged *these premises* to be taken over by the Tamil people (the second, third and fourth defendants are Tamils). They wanted *this place* to do business These Tamil people brought their own fittings to this hotel. Now there are new fittings in this hotel". This evidence would go to show that the second defendant was not looking for a business to take it on lease. He wanted premises to carry on his own business as a hotelier. The tenant's hotel business was not a paying concern. The second defendant is an Indian, who did not even have a temporary residence permit. It was under these circumstances that ID1 was entered into.

The second defendant changed the name from Ajantha Hotel to Ajantha Cafe, though the licence for the business continued in the name of the tenant. He changed the type of food served there, equipped the place and had his own employees.

In paragraph 7 (d) of the amended answer the appellants averred : "That the first defendant was carrying on a hotel under the name of Ajantha Hotel in a portion of the said premises. That the first defendant by an Indenture dated 10th August, 1959, leased the said Hotel Business to the second defendant for a period of four years"

The tenant's evidence-in-chief regarding the Rs. 1,000 deposited with him in terms of clause 2 of ID1, which is as follows : "The Rs. 1,000 is to be set off for the last 5 months of *occupation*", is not without significance.

The tenant has given the following pieces of evidence : "Adjoining this hotel is my textile shop separated by almirahs". "They are *furnished hotel premises* for which I get Rs. 200 a month". "The hotel portion is bigger than the other two portions and it has a bigger compound and rent for it is Rs. 25". "I have no right to eject him if he does any other business but the hotel business".

When it was put to him that ID1 was prepared in order to fall in line with the law he said, "I got permission of the landlord to *lease these premises* out".

Clause 6 gives the second defendant the right to "terminate the said business" if he finds it difficult to carry on. If it was only a "lease of the business" one would expect the business to be handed back to the tenant and not to be closed.

All the evidence, coupled with this clause, gives the show away. One cannot resist the conclusion that the transaction was in reality sub-letting of a distinct portion of the premises. This would entitle the landlord to eject the tenant and sub-tenants.

For these reasons, I would dismiss the appeal with costs.

Appeal dismissed.