

1967

*Present: Siva Supramaniam, J.*S. D. ABDUL LATIFF, Appellant, and M. N. SEYED
MOHAMED and another, Respondents*S. C. 105/1965—C. R. Kurunegala, 2302/L**Rent Restriction Act—Subletting of premises in the guise of a “partnership agreement”—Immateriality of the label to the transaction.*

Where a tenant of rent-controlled premises enters into a “partnership agreement” with a person in relation to the premises but such agreement is only a blind to cover the subletting of the premises, the tenant and the sub-tenant are liable to be ejected by the landlord if the landlord has not given his written consent to the agreement.

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

C. Ranganathan, Q.C., with *Ananda Paranavitane*, for the plaintiff-appellant.

W. D. Gunasekera, for the defendants-respondents.

Cur. adv. vult.

March 20, 1967. SIVA SUPRAMANIAM, J.—

The only question for determination on this appeal is whether on the facts as found by the learned Commissioner of Requests the appellant has established that the 1st respondent sublet the premises in suit to the 2nd respondent. The principal facts are as follows:—The appellant became the owner of the premises in suit (which are subject to the provisions of the Rent Restriction Act) in July 1962 and the 1st respondent who had been the tenant under the previous owner attorned tenancy to the appellant in August 1962. The 1st respondent had previously carried on the business of selling fancy goods in the said premises. Since July 1959 the business had in fact been carried on by the 2nd respondent in terms of a notarially attested agreement D1 entered into between the two respondents on 20th July 1959 which was effective for a period of four years. On 23rd April 1963 the respondents entered into a fresh agreement D2, valid for a period of seven years. The new agreement D2

was a renewal of the old agreement D1 with a variation of some of the terms and conditions. Each of the documents D1 and D2 was designated 'Partnership Agreement'.

The appellant contends that D1 and D2 were not in fact partnership agreements but were blinds to cover the subletting of the premises by the 1st respondent to the 2nd respondent. The case of the respondents, on the other hand, is that the business was carried on in partnership and that the 2nd respondent, as the Managing partner, was in occupation of the premises and in control of the business. It is not disputed, however, that the attornment of tenancy to the appellant by the 1st respondent was in his personal capacity and not as an agent of the partnership.

It will be sufficient for the purpose of this appeal to examine the document D2, as that was the agreement entered into between the respondents during the period the 1st respondent was a tenant of the appellant. Among the terms and conditions of D2 were the following :—

- (a) that all the capital necessary for the business should be contributed by the 2nd respondent ;
- (b) that the 2nd respondent should have the full management and control of the business "without any interference whatsoever" from the 1st respondent ;
- (c) that all electricity bills due on the said premises and all licence fees, etc., due in respect of the said business shall be paid by the 2nd respondent "on his own account" ;
- (d) that the 1st respondent shall not be entitled to any share of the profits or be liable for any share of the losses arising from the said business ;
- (e) that the 2nd respondent shall pay the 1st respondent as his share of the profits a fixed sum of Rs. 100 per month out of which the 1st respondent shall pay the rent and rates and taxes due in respect of the said premises ;
- (f) that, in any case, the 1st respondent "shall not be entitled to any payment over and above the monthly sum of Rupees One hundred above mentioned either as profit or in any other manner" ;
- (g) that the 1st respondent shall not have the right to request the 2nd respondent to wind up the business ;
- (h) that the 2nd respondent shall have "the full liberty to admit such other partner or partners to carry on the said business", and that the 1st respondent shall have no right to prevent the 2nd respondent from taking in such partner or partners ;
- (i) that certain furniture and fittings in the said premises belong to the 1st respondent ; and
- (j) in the event of default of payment of the monthly sum of Rs. 100 for more than three months, the 2nd respondent will deliver peaceful possession of the premises along with the furniture and fittings to the 1st respondent.

The aforesaid "terms and conditions" of the agreement D2 make it abundantly clear that the business carried on in the premises was the sole concern of the 2nd respondent and all that the 1st respondent was entitled to was the right to receive a fixed monthly payment of Rs. 100 during the period of seven years covered by the agreement. The sum of Rs. 100 was in reality the rent payable by the 2nd respondent to the 1st respondent for the premises and the furniture. There can be little doubt that the use of the word "partnership" in the agreement was in fact a blind to cover a lease of the premises. If the document had been described as a "lease of the furnished premises" instead of as a "partnership" the respective rights and obligations of the two respondents would not have been any different. As was stated by Nagalingam S.P.J. in *Charles Appuhamy v. Abeyesekera*¹, "the mere affixing of a label to a transaction by the parties or by their legal advisers does not control or govern the true nature of the rights and liabilities created which have to be determined by an examination of the terms and conditions of the instrument itself."

It was also established in evidence that on the bills issued in connection with the business carried on in the premises in question, the name of the 2nd respondent was mentioned as the "proprietor".

On the evidence before him, the learned Commissioner of Requests should have answered in favour of the appellant the issue relating to the subletting of the premises by the 1st respondent to 2nd respondent without the written consent of the appellant and the consequential issue relating to ejectment.

I allow the appeal, set aside the judgment and decree and direct that a fresh decree be entered in favour of the plaintiff-appellant as prayed for in the plaint. The 1st defendant-respondent will be entitled to credit in respect of all sums of money paid by him as rent to the plaintiff-appellant after the date of the institution of this action.

The appellant will be entitled to his costs in both Courts.

Appeal allowed.
