

1951

*Present : Basnayake J.*

HENRY, Appellant, and HAMIDOON HADJIAR, Respondent

*S. C. 204—C. R. Colombo, 27,531**Rent Restriction Act, No. 29 of 1948—Section 13 (1) (c)—Right of a co-landlord to sue tenant in ejectment.*

Section 13 (1) (c) of the Rent Restriction Act does not enable one only of several co-landlords to sue a tenant in ejectment on the ground that he requires the premises for his occupation as a residence.

**A** PPEAL from a judgment of the Court of Requests, Colombo.

*H. W. Jayewardene*, for the defendant appellant.

*A. H. C. de Silva*, for the plaintiff respondent.

*Cur. adv. vult.*

May 8, 1951. BASNAYAKE J.—

This is an appeal by the tenant of premises No. 88, Silversmith Street, against whom a decree for ejectment has been entered. The respondent to this appeal is a person who claims to be the landlord of the premises. The appellant has been the tenant of these premises for the last ten years,

during which period it has changed hands several times. One Letchumanan Chettiar was the original owner, from whom the respondent's mother and aunt purchased the premises in 1947. The respondent acted on their behalf and collected the rents of not only these premises but of a row of fourteen tenements which belonged to them. The respondent's mother died in 1949 whereupon he and his sister succeeded to her property. The respondent is the owner of two-thirds of a half share of the premises. The other third of that half share is owned by his sister. His aunt owns the remaining half share. The respondent, his sister, who is married, and his aunt, are in occupation of premises No. 180/9, Grandpass Road. The respondent who at the date of this action was a bachelor, 24 years of age, is carrying on business as a jeweller in Fort in partnership with one Jawar. The respondent's case is that a marriage has been arranged for him and that he requires the premises for occupation by him as a residence on his marriage.

The question that arises for consideration in this case is whether one only of three co-owners of any premises is entitled to bring an action in ejectment on the ground that he requires the premises for occupation as a residence. The question has not been raised in that form in the issues framed at the trial, but issue No. 6 is wide enough. It reads: "Can the plaintiff in any event maintain this action for ejectment?". Even when no specific issue is raised I think the Court is justified in seeing whether the conditions of the Rent Restriction Act are satisfied before decree in ejectment is granted.

Section 13 (1) (c) of the Rent Restriction Act, No. 29 of 1948, on which the respondent relies, permits a landlord to sue a tenant in ejectment when the premises are required for his occupation as a residence or for the occupation of any member of the family of the landlord. The section does not enable one of several co-landlords to sue a tenant in ejectment on the ground that he requires the premises for his occupation as a residence. The respondent is therefore not entitled to maintain this action as section 13 (1) prohibits the institution of any action in ejectment which does not fall within the proviso to that section except in a case where the authorisation of the Rent Control Board has been obtained.

The appeal is allowed with costs.

*Appeal allowed.*

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