

1971            *Present: Sirimane, J., and Weeramantry, J.*

G. P. C. DE SILVA, Appellant, and  
S. R. V. REDDIYAR and others, Respondents

*S. C. 426/68 (F)—D. C. Matale, 1410/L*

*Lease—Condition therein prohibiting subletting of the leased premises—Subsequent sale, by lessee, of the business carried on by him in the premises—Rights of parties.*

Where a building is leased to a person to carry on a business and the lease contains a condition that the lessee shall not sublet the premises, the lessee is not entitled to circumvent the condition by purporting to sell the business to a third party.

**A**PPEAL from a judgment of the District Court, Matale.

*T. B. Dissanayake*, for the plaintiff-appellant.

*A. Sambandan*, for the defendant-respondent.

*Cur. adv. vult.*

June 16, 1971. SIRIMANE, J.—

On a deed of lease (P1) dated 27.5.66, the plaintiff had leased premises No. 217, Trincomalee Street, Matale, to one Natchiappen for a period of two years commencing from 7.6.66. Natchiappen was not in Ceylon on the day P1 was executed, and his Attorney contracted on his behalf.

The plaintiff stated in evidence that he knew Natchiappen, who had had dealings with his father during the latter's life time. Though the plaintiff was prepared to lease his building to Natchiappen to carry on a business, one could infer from his evidence and conduct, that he was not prepared to lease it to other traders.

The first condition in the lease reads as follows :—

“That the lessee shall not assign this lease or sublet the said premises without the consent in writing of the lessor.”

By deed P2 dated 1.6.66, Natchiappen (through his Attorney) purported to sell “*the business* presently carried on at premises No. 217, Trincomalee Street” to the defendants. It is the plaintiff's case that P2 was a mere “blind” and that Natchiappen had in reality sublet the premises, contrary to the conditions in P1.

The plaintiff had apparently learnt that an effort was being made to circumvent the provisions in P1; and he says in evidence (which is not contradicted) that he wrote to Natchiappen on 27.7.66 not to sublet the premises. The certificate issued under the Business Names Registration Ordinance (P3) shows that Natchiappen was the sole owner of the business from 1959, that the defendants were registered as the owners from 1.6.66, and that on 28.7.66 (i.e. the day after the plaintiff wrote to Natchiappen) a change in ownership was notified by adding Natchiappen also as one of the owners. Natchiappen in fact was in India, and had no occupation at all of the premises. It was the defendants who went into occupation of the premises and were in complete control thereof. The plaintiff treated them as trespassers, and when they refused to quit on being asked to do so, filed this action for a declaration of title, ejectment, and damages.

It is of some significance that, when the case came up for trial in the lower court after the period of two years in P1 had elapsed, the defendants were still in occupation of the premises and though none of them gave

evidence at the trial, they were still resisting the plaintiff's claim. The appeal is still being argued on their behalf nearly three years later.

I think it is clear from the evidence that P2 was written in the form of a deed of sale merely to conceal the true nature of the transaction between Natchiappen and the defendants. In construing a document like P2, the Court should take into account its true intent and purpose and the effect it has on the rights of parties.

I do not think that the case of *Charles Appuhamy v. Abeysekera*<sup>1</sup> (56 N.L.R. 243) relied on by the District Judge is of any assistance to the respondents. In that case the management, control and conduct of the business was "leased" by A to B for a certain term of years. It was held that at the end of the specified period, B could not claim to be a tenant, entitled to protection under the Rent Restriction Act. The question of subletting or breach of a condition did not arise in that case.

I set aside the judgment and decree entered in this case, and enter judgment for the plaintiff as prayed for with costs both here and below.

WEERAMANTRY, J.—I agree.

*Appeal allowed.*

