

1957

*Present*: H. N. G. Fernando, J.

K. A. SHAHUL HAMEED, Appellant, and M. S. M. MADUNI,  
Respondent

*S. C. 162—C. R. Colombo, 59, 164*

*Rent Restriction Act—Action for ejectment—“Reasonable requirement”—Burden of proof.*

Where a landlord who seeks to eject his tenant on the ground that the premises let are reasonably required by him for occupation as a residence does not adduce sufficient evidence on his behalf to establish that he reasonably requires the premises, it is not necessary to weigh in the balance the comparative needs of the parties or to consider whether the tenant's failure to vacate is justified.

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

*Sir Lalita Rajapakse, Q.C.*, with *W. P. N. de Silva*, for the defendant-appellant.

*Vernon Wijetunge*, for the plaintiff-respondent.

*Cur. adv. vult.*

April 11, 1957. H. N. G. FERNANDO, J.—

The plaintiff has succeeded in this action for ejection on the ground that the premises are reasonably required by him for occupation as a residence. The Commissioner has found in favour of the plaintiff after weighing in the balance the comparative needs of the parties; but in my opinion the evidence adduced on behalf of the plaintiff did not take the case to the stage at which comparative needs had to be considered.

The plaintiff is himself the tenant of one Hamid, and alleged that Hamid had given him notice to quit. The only evidence concerning this notice to quit is that it was given three years before the trial and was not followed by proceedings for ejection. It is obvious that at the time of the filing of the plaint, the plaintiff was not legally under notice to quit and was not liable even to be sued in ejection by Hamid.

It was further alleged that the house presently occupied by the plaintiff is not fit for human habitation; in fact Hamid stated that he gave the plaintiff notice three years before because the premises needed repairs estimated to cost Rs. 6,000 to Rs. 7,000. If this evidence be true, it is strange that the plaintiff has been able to continue in occupation without injury to himself or his house-hold goods. The only substantial complaint about the condition of the house is that the roof is in bad condition as it is liable to come down at any time; considering the size of the house, it is impossible to believe that the repairs cannot be effected while the plaintiff's tenancy continues. It has not been suggested that the plaintiff cannot temporarily find shelter while the work is being done. The evidence as to unfitness is vague and unconvincing.

The plaintiff stated that there is only one bed-room in the house he now occupies, but he did not allege in his evidence that the accommodation is insufficient for his family. The evidence concerning the number of people who are permitted by Hamid to live in the premises of which he is the tenant shows that people in the position of the plaintiff may not regard the accommodation in the plaintiff's house as being inadequate, and I decline to infer inadequacy in the absence of evidence from the plaintiff on the point.

The evidence for the plaintiff discloses only a desire on his part to vacate his present house, but falls short of establishing any need to vacate it. Hence the plaintiff has not proved that he reasonably requires the premises in dispute and there was no call to consider whether the defendant's failure to vacate is justified.

The appeal is allowed and the plaintiff's action is dismissed with costs in both Courts.

*Appeal allowed.*