1956 *Present :* Gunasekara, J., and Sinnetamby, J.

E. NALLATHAMBY, Appellant, *and* MRS. G. M. LEITAN, Respondent

S. C. 156—D. C. Gampaha, 3151/M

Rent Restriction Act—Meaning of term "premises"—How far it includes land on which a building stands.

Where a property consisting of a house and garden is let as one unit, the landlord cannot subsequently claim that the standard rent should be calculated on the basis that the premises let consists of two parts and that only the portion where the house stands is subject to the provisions of the Rent Restriction Act, to the exclusion of the remaining baro land.

Where a house has been let together with land, what one has to ascertain is whether the house is an adjunct of the land or the land an adjunct of the house. It is a pure question of fact. If the land is considered to be an adjunct of the house, the Rent Restriction Act will apply, but if the converse is the case the Act will not apply.

APPEAL from a judgment of the District Court, Gampaha.

H. W. Jayewardene, Q.C., with *M. Somasunderam* and *S. Sharvananda*, for the plaintiff appellant.

Walter Jayawardene, with *Neville Wijeratne*, for the defendant respondent.

Cur. adv. vult.

September 25, 1956. SINNETAMBY, J.—

In this case the plaintiff who was a tenant under Agreement D2 of 30/9/46 of the premises described therein as bearing Assessment No. 245, Sea Street, Negombo, sued his landlord, the defendant, for the recovery of excess rent over and above the standard rent of the premises for the period 1st August, 1949 to 31st December, 1951, aggregating to Rs. 1,544·25. According to the evidence the property let is about 2½ or 3 acres in extent with a dwelling house standing on a site of about one rood in extent. The rest of the land is planted in coconuts. At the commencement of the tenancy the entire premises were let as one unit and bore Assessment No. 245 which in 1948 was changed to No. 156. The premises were described in the Assessment Register P1 as "Tiled house and garden". In December, 1951 the premises were divided by the Municipality at the instance of the defendant into two parts and given two separate assessment numbers. The house described in P1 as "tiled house" was given No. 154 and the garden described in P1 as "garden" was given No. 156 as a separate entity, the Annual Value of Rs. 849 being apportioned between them as follows: Rs. 589 for the tiled house and Rs. 260 for the garden. By agreement of the parties defendant took over possession of the garden bearing Assessment No. 156 and the plaintiff continued in possession of the dwelling house.

The evidence discloses that the annual value in 1941 was Rs. 289 and it is not disputed that on this basis the standard rent would be Rs. 36·75 but the defendant has recovered at the rate of Rs. 90 per mensem: Rs. 53·25 per month represents the excess rent paid. The defendant however contends that the premises let consists of two parts represented now by the two portions bearing the assessment numbers 154 and 156; that there has been an apportionment of the rent between them; and that it is only the portion where the house stands which is subject to the provisions of the Rent Restriction Act and not the other. The argument in the trial Court proceeded on the basis that if the house and its immediate adjuncts are to be considered as a separate unit subject to the provisions of the Rent Restriction Acts and the garden another unit not subject to the Act in respect of which the landlord could recover

any rent he pleases there would be no overpayment, and it is on this basis that the learned trial judge based his decision. It is against this finding that the present appeal has been preferred.

Ordinance No. 60 of 1942 [1] by which rent restriction was first introduced appiied to all "premises" within certain proclaimed areas and the word is repeated in the Act of 1948 [2]. There is no definition given to the word "premises" in either of the enactments and it has been left to the Courts to evolve a definition which would give effect to the intention of the legislature. This Court has held in *Pakiadasan v. Marshall Appu* [3] that the term does not apply to a bare land and for the Act to be applicable there must be a building on the land : the expression used is "a building with the land appurtenant thereto devoted to residential or business purposes". For the purpose of that decision it was only necessary to hold that land without any building on it does not come within the ambit of the Ordinance. The Court was obviously confining its comments to the facts of that particular case. I do not think this decision specifically defines "premises" as something which must be limited to the building *and the land appurtenant thereto,* in the sense that if the property let contains a building and more land than can be regarded as strictly "appurtenant" thereto, it cannot be regarded as "premises". If so it would raise problems of a difficult nature and it would be contrary to the view taken in the earlier decision of *Nicholas Hamy v. James Appu* [4] by a Bench of two judges reported in 52 N. L. R. 137 where the word is defined as "building" or "building on a land". This earlier decision was not cited at the subsequent hearing of *Pakiadasan v. Marshall Appu* when the Bench consisted of a single judge sitting alone. In *Nicholas Hamy v. James Appu* the word "premises" was held to include not only the building and the land on which it stands but even the machinery and tools in the building which was being used as a workshop. Each case must be decided on the facts and circumstances established by the evidence given in the course of the trial and comments made in connection with facts established in one case may be wholly inappropriate in another case where the facts are entirely different.

If the definition is to be confined to the "building and land appurtenant thereto" a difficulty with which one is immediately confronted is the difficulty of deciding what extent of land can be regarded as appurtenant to a building. It will become a variable and an uncertain quantity and a fruitful source of much litigation. What one may regard as appurtenant to a building in the countryside will not be so regarded in a busy section of the built up portion of the City, etc. It was suggested that to come within that term the land might be limited to ½rd the area of the actual site on which the building stands in view of the provisions of the Housing and Town Improvements Ordinance, where presumably for health reasons, it is provided that no building should cover more than ⅔rd the area of the land on which it stands. This is an express

[1] *Rent Restriction Ordinance No. 60 of 1942.*
[2] *Rent Restriction Act No. 29 of 1948.*
[3] *(1951) 52 N. L. R. 335.*
[4] *(1950) 52 N. L. R. 137.*

provision in that particular Ordinance which cannot be willy nilly imported into another merely because it may provide a satisfactory solution to a difficult question.

No assistance can be derived from a consideration of the English Acts where the word " premises " is not used. The original Act of 1915 was introduced in the United Kingdom immediately after the commencement of the first World War and was applicable to

> " a house or part of a house let as a separate dwelling where such letting does not include any land other than the site of the dwelling house and a garden or other premises within the curtilage of the dwelling house." (*1950 2 A. E. R. 1082*)

The word " site " has been held to mean the portion of land upon which the four walls of the house stands. " Curtilage " is defined in the Concise Oxford Dictionary to mean " area attached to a dwelling house ". This provision was found to be unsatisfactory and was superseded by the Act of 1920 which provided as follows in Section 12 (2) :

> " For the purpose of this Act any land or premises let with a house shall, if the rateable value of the land or premises let separately would be less than ¼ the rateable value of the house, be treated as part of the house, but, subject to this provision, this Act shall not apply to a house let together with land other than the site of the house." (*1950 2 A. E. R. 1082*)

It will thus be seen that if the rateable value of the land when let to a hypothetical tenant exceeds ¼ the rateable value of the house alone the Acts would not apply : something more definite and more readily ascertainable than the vague term " curtilage " was brought into force. It is important to note that to be treated as part of the house the land should have been let together with the house and in considering whether this was so the English Courts have held that it is important to consider whether the two lettings were treated *by the parties* as one (Megarry, 7th Ed. p. 92) and this far outweighed the circumstance that the house was on a weekly tenancy and the land on a lease (Megarry, 7th Ed. p. 92 where reference is made to decided cases). The Act of 1939 amended these provisions further and provided that

> " any land or premises let together with the dwelling house shall unless the land or premises consist or consists of agricultural land exceeding 2 acres in extent be treated as part of the dwelling house."

It will be seen that the English Acts from time to time extended the scope of the Rent Acts. In 1915 it covered only the site and the curtilage ; the 1920 Act extended the meaning of the term " dwelling house " to include not only the curtilage but also land let with the house provided its rateable value was not more than ¼ the rateable value of the house.

The Act of 1939 widened the protection given to tenants still further and included within the scope of the Acts any land however large let with the dwelling house subject to the condition that if it was agricultural land it did not exceed two acres provided of course the rateable value of the entire unit did not exceed the figures mentioned in the Act : the term " agricultural land " was defined. The learned trial judge was mistaken in regard to the scope and effect of the English Acts when he observed :

> " Even under the English Law where a house is let with land other than the site of the house the letting ceased to be protected by the Rent Act ."

At no stage in the development of the Rent Acts was this the law in England. The learned trial judge was perhaps influenced by this erroneous impression he had of the law prevailing in England under the Rent Acts. He purported to follow *Pakiadasan v. Marshall* in which the observations of the Appeal Judge must be regarded as " obiter ". He did not consider, presumably because it was not brought to his notice, the case of *Nicholas Hamy v. James Appu*.

The Ceylon Ordinance and the subsequent Acts afford no guidance as to what is meant by the term " premises " and no attempts have been made except, as far as I can gather, by the decisions already referred to, to define it. It seems to me that where a house has been let together with land what one has to ascertain is whether the house is an adjunct of the land or the land an adjunct of the house. It is a pure question of fact but this aspect of the matter has not been considered by the learned trial judge. If the land is considered to be an adjunct of the house, in my view, the Rent Restriction Act will apply but if the converse is the case the Act will not apply. In order to decide this it seems to me the simple test to apply is to consider how the parties regarded the transaction. Did they regard it as the letting of a house with a garden attached in which event it will come within the purview of the Rent Restriction Act or did they regard it as a lease of a land in which there happens to be a house or hut in which event the rent paid cannot be regarded as coming within the control of the Rent Restriction Act ? Applying this test it is abundantly clear that the parties regarded the contract in question as a letting of a house with a garden as an adjunct. This is quite manifest on an examination of the contract D2. Para 5 provides that the tenant shall on 30/9/47 deliver peaceful possession of the premises as the landlord *requires the same for his and his family's occupation*—a contingency which did not eventually arise. It is only a house that can be occupied. Para 6 provides that the landlord will not attend to any repairs of the premises during the tenancy, and para 7 provides that if the landlord requires the house before the termination of the said period he will give three months' notice to the tenant. What was uppermost in the minds of the parties was the house and not the garden. " Repairs " is a term used in connection with a building and there are no covenants which one associates with a plantation in this

agreement. Learned Counsel for the respondent, however, argued, if I understood him aright, that where the value of a house as a house has been increased by the existence of a garden then the Rent Restriction Act would not apply. No doubt, where the land is fairly large in extent and is planted with coconuts, the land apart from the house would have an appreciable income value but I cannot conceive of a case where the value of any building would not appreciate in value at least to the tenant by the existence of a garden, however small in size or in productivity. The test suggested by learned Counsel would be too vague and uncertain.

The mere fact that what was originally one unit has since been separated into two would not in my opinion make any difference. Learned Counsel relied on the case of *Langford Property Co. Ltd. v. Batten*[1] in support of his argument. In that case two separate units which were originally separately let were subsequently let together as one unit and it was held that the premises subsequently let formed an entity different to the house alone which was originally let to the tenant for the purpose of the Rent Restriction Act, and that therefore the standard rent of the new unit was not the standard rent of the house alone. With this statement of the law one cannot possibly disagree, but it does not mean that the converse proposition is necessarily correct, viz., that where land and a house are let as one unit its subsequent division into two will make it legitimate to regard the original letting as divisible into two separate units and that the Rent Act will apply only to that portion on which the house stands, the standard rent being the rent at which it could in 1941 be let to a hypothetical tenant and not to the bare land which can be let at any rent. To subscribe to such a proposition would have the effect of depriving the tenants of the protection which our Rent Act gives them, for an unscrupulous landlord can always subdivide or claim that he can subdivide his property into a portion containing the house and a portion not containing the house and so contend that he can charge what rent he pleases for the bare land. The result would be that the Rent Act cannot be applied to any house which has appurtenant to it a plot of land however small over and above the site on which the house stands. If the house and its surroundings are let as one unit it must remain one unit and neither in common sense nor in law can it be regarded as two units merely because it is capable of being subdivided later into two.

In my view the only rational test to apply is to ascertain whether it was the house that was let with the garden as an adjunct or whether it was the garden that was let with the house as an adjunct. In deciding this question great importance must be attached to the intention of the parties. If the intention is clear and unmistakable there is in my view no need to go beyond it. Applying this test to the facts of the present case the only conclusion possible is that it was the house that was let to the plaintiff. The Rent Act would in consequence apply

[1] *(1950) 2 A. E. R. 1079.*

to the letting. The plaintiff having paid more than the standard rent is entitled to recover the overpayments. I would accordingly set aside the judgment of the learned District Judge and enter judgment for plaintiff as prayed for with costs in both Courts.

GUNASEKARA, J.—I agree.

Appeal allowed.