

1966

Present : G. P. A. Silva, J.

M. ABDUL RAHIM, Appellant, and M. M. IBRAHIM, Respondent

*S. C. 66/1965—C. R. Kalmunai, 127/L*

*Rent Restriction (Amendment) Act, No. 12 of 1966—Section 3—Benefit of it pleaded by tenant in the Appellate Court—Right of landlord to prove then, for the first time, that the premises are excepted premises—Rent Restriction Act, s. 2 (4).*

In an action in ejectment, a landlord (the plaintiff) obtained judgment against his tenant (the defendant) on the footing that the premises let were governed by the Rent Restriction Act and that they were reasonably required by him. In appeal the defendant-appellant brought to the notice of the Court that, in view of the provisions of the Rent Restriction (Amendment) Act No. 12 of 1966, the proceedings were null and void because he had not been given one year's notice to quit. Thereupon the plaintiff sought to prove that the premises were "excepted premises" within the meaning of section 2 (4) of the Rent Restriction Act.

*Held*, that the plaintiff should be permitted to prove that the premises were excepted premises.

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

*H. V. Perera, Q.C.*, with *S. Sharvananda*, for the Defendant-Appellant.

*C. Ranjanathan, Q.C.*, with *S. C. Crossette-Thambiah*, for the Plaintiff-Respondent.

*Cur. adv. vult.*

October 30, 1966. G. P. A. SILVA, J.—

The plaintiff-respondent brought this action against the defendant-appellant for ejectment from certain premises let by the plaintiff to the defendant on a monthly tenancy at the rate of Rs. 150 per month. It was alleged in the plaint that the premises were governed by the provisions of the Rent Restriction Act and the ground urged by the plaintiff for ejectment of the defendant was that they were reasonably required by the plaintiff for his business. The case proceeded on the footing that the premises were in fact governed by the Rent Restriction Act and the learned Commissioner entered judgment in favour of the plaintiff on the ground that they were reasonably required by him.

Although one of the grounds stated in the petition of appeal was that the Commissioner erred in holding that the premises were reasonably required, counsel for the appellant did not base any argument on those lines but brought to the notice of this court that, in view of the provisions of section 3 of the Rent Restriction (Amendment) Act No. 12 of 1966, unless a tenant of any rent controlled premises was given one year's notice to quit the premises all proceedings in the case were null and void. Counsel for the respondent, while not contesting the correctness of the submission of counsel for the appellant, produced a document X1 which was a certified extract from the Assessment Register relating to the

premises in question during the period 1961–1965 to show that the premises were not in fact rent controlled at the time the action was filed, namely, on 18.5.1964, although it was so stated incorrectly in the plaint. He argued on the basis of this document that the premises in question were therefore in fact “excepted premises” within the meaning of section 2 (4) of the Rent Restriction Act and that the provision of the amending Act on which the appellant relied had no application to the premises. Counsel for the appellant contended that the plaintiff came to court on the basis of the premises being rent controlled and that it was therefore not open to him now to meet the situation that has arisen after the new Act on a different basis, namely, that the premises were not in fact rent controlled. While this was his main contention he also contended that the document X1 should not be accepted by this court in considering the question before it. He also indicated that the appellant did not have an opportunity to object to the revised assessment of 1961 but for which the premises would still be rent controlled, in which event the provisions of the Act of 1966 would be applicable and the proceedings rendered null and void.

It seems to me that, if the document X1 is taken into consideration, the question for decision in this case must necessarily be affected. For, if the annual assessment of the premises is higher than the limit which would bring them within the operation of the Rent Restriction Act, the contention of counsel for the appellant that the proceedings be declared null and void cannot prevail. While it is correct that the plaintiff came to court on the basis that the premises in question were governed by the provisions of the Rent Restriction Act, there was no issue on this point. When counsel for the respondent now submits document X1 which negatives this averment on which he came to court, the interests of justice would not be served if this court were to refuse to consider it for the reason that it conflicts with the basis on which the plaintiff came to court. Different considerations would arise of course if the question that has arisen now, namely, whether the proceedings are a nullity, had arisen at the trial in the lower court and the plaintiff had not produced the document X1 which would have been so relevant to the decision of that question. The case proceeded to trial on the basis of an ejection case in respect of premises governed by the Rent Restriction Act and the plaintiff in fact undertook a much heavier burden of proving his reasonable requirement which he successfully did. He did not therefore secure any advantage for himself by the averment that the premises were rent controlled in which event this court would have been slow to accept any submission based on document X1. As the situation that has arisen has resulted from the passing of the new Amending Act the issue whether the premises were in fact rent controlled at the time of the institution of the action now arises in an acute form. The document produced by the respondent *prima facie* shows that his contention that the premises in question are not rent controlled is correct. As, however, the appellant has had no opportunity of attacking the validity of the revised assessment of the premises in 1961, which has resulted in the

premises being taken out of the sphere of rent controlled premises, it is not possible for this court to decide the question on the sole testimony of this document. I therefore make order that this case be sent back to the Commissioner to inquire into the question whether the premises in respect of which this action was brought were rent controlled premises within the meaning of the Rent Restriction Act and to forward his finding to this court. In view of the time that has already elapsed after the trial, the Commissioner of Requests will give priority to this matter and forward his finding to this court as early as practicable. The Registrar will, on receipt of the further proceedings from the Commissioner, list this case for further hearing within a month of such receipt.

*Sent back for further proceedings.*

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