1950 *Present :* **Gratiaen J.**

WEERASINGHE, Appellant, *and* CANDAPPA, Respondent

S. C. 50—C. R. Colombo, 23,176

Rent Restriction Ordinance, No. 60 of 1942—Action for ejectment—Circumstances when landlord's claim must prevail—Right of purchaser from landlord to eject tenant—Order for ejectment—Legality of suspending it for a short time.

In an action for ejectment brought under the Rent Restriction Ordinance the landlord's claim must prevail when, in the Court's opinion, the hardship to the landlord either outweighs or is evenly balanced with that of the tenant.

A person who becomes a landlord by purchasing a dwelling-house is not disqualified, in Ceylon, from claiming under the Rent Restriction Ordinance an order for ejectment of the tenant on the ground that the premises are reasonably required for his occupation.

In rent restriction cases an order for ejectment may be suspended for a short time so as to mitigate the hardship caused to the tenant.

APPEAL from a judgment of the Court of Requests, Colombo.

H. V. Perera, K.C., with *M. Ramalingam*, for plaintiff appellant.

H. W. Jayewardene, for defendant respondent.

Cur. adv. vult.

November 21, 1950. GRATIAEN J.—

The defendant was the tenant of a bungalow in Colpetty under M. S. Raju who, at a later date, sold the premises to the plaintiff. The plaintiff and her family had earlier lived in her own house in Nugegoda, but this property was compulsorily acquired by the Crown in April, 1949, and a few months later she was obliged to vacate it on an order of Court. She accordingly negotiated with Raju for the purchase of the premises occupied by the defendant, and it was made clear to Raju and to the defendant that, in the circumstances in which she and her family were placed, vacant possession would be a condition of the purchase. The defendant gave an undertaking to vacate the house on the completion of the transaction, and there is no question that it was on the faith of this promise that the plaintiff purchased the property in August, 1949. Thereafter, for reasons which, owing to the acute housing shortage in Colombo, are understandable though not commendable, he refused to honour his undertaking. The plaintiff, her husband and three young children were accordingly placed in a most embarrassing position, and they were compelled to make certain makeshift arrangements for their shelter. They were given temporary accommodation in a small room in the house occupied by the plaintiff's father who was himself under notice to quit. The situation was further complicated by the circumstance that the birth of yet another member of the family was anticipated in May, 1950. The defendant nevertheless pointed to his own difficulty in finding suitable accommodation for himself and his family, and he adamantly refused to quit the premises.

The plaintiff sued the defendant in the Court of Requests of Colombo on 6th October, 1949, to have him ejected. The defence was that the premises were " not reasonably required for occupation as a residence " for the plaintiff and her family within the meaning of the Rent Restriction Ordinance. This contention prevailed in the lower Court, and the present appeal is from the judgment of the learned Commissioner dismissing the plaintiff's action.

It is now settled law that in considering whether premises are reasonably required for the occupation of a landlord, a Court must take into account, *inter alia*, the degree of hardship which an order for eviction would cause to the tenant (*Gunasena v. Sangaralingam Pillai*[1]). As Windham J. points out, the lack of alternative accommodation for the tenant sought to be evicted is a relevant and indeed a very important factor for consideration, but " a case might well occur where, after duly considering the fact that there was no alternative accommodation, the court

[1] *(1948) 49 N. L. R. 473.*

might still consider that the landlord's requirement was reasonable ". Mr. Jayawardene reminds me that in *Koch v. Abeyasekera*[1], I had expressed the view that " the claims of a tenant who, in spite of diligent search, has failed to find alternative accommodation should be preferred to those of a landlord whose family does at least possess *a home in which they can continue to live* ". This is still my view, but the principle cannot apply where, as in the present case, the landlord who claims to be restored to occupation of his own house is, at the relevant date, living precariously and in great discomfort in circumstances which make continuity of tenure in the other premises uncertain.

In *Mendis v. Ferdinands* [2], by brother Dias, if I may say so with respect, had exhaustively analysed the effect of the earlier decisions as to the rules which should guide a court in deciding between competing claims for premises to which the Rent Restriction Ordinance applies. He pointed that the landlord's claim must prevail when, in the Court's opinion, the hardship to the landlord either outweighs or is evenly balanced (as far as such matters can be assessed) with that of the tenant.

If the present case be considered on this basis in the light of the facts which have been accepted by the learned Commissioner, I think that the hardship to the plaintiff if eviction be refused would certainly not be less than the hardship which would be caused to the defendant if eviction were ordered. Indeed, the impression I have formed is that the learned Commissioner would himself have taken the same view in determining the balance of hardship *if the plaintiff had been the landlord from the commencement of the defendant's tenancy*. The learned Commissioner seems to have thought, however, that the circumstance that the plaintiff had only become a landlord by purchase and subsequent attornment was a disqualifying factor in her case. " A person who becomes a landlord in such fortuitous circumstances as have been established in this case ", he said, " cannot be said to require the premises reasonably within the meaning of the Ordinance. The mere purchase of premises would not create in the purchaser a reasonableness which the law would recognize so as to entitle that person to eject the occupier. I therefore . . . . dismiss this action with costs ".

In my opinion the learned Commissioner has gravely misdirected himself in permitting this factor to influence his judgment. It is no doubt true that *in England* a person who becomes a landlord by purchasing a dwelling house after a prescribed date is disqualified by statute from claiming an order for ejectment on the sole ground that the premises are reasonably required for his occupation (23 and 24 Geo. V, Cap. 32, Schedule 1, para (*h*)). The intention of Parliament in introducing this enactment was to protect a tenant from having the house in which he lives bought over his head (*Epps v. Rothnie* [3]). The Ceylon Legislature, however, for reasons which it is not the function of this Court either to question or to praise, has advisedly chosen not to disqualify persons who become landlords by purchase from claiming possession under the Rent Restriction Ordinance. The claim of such a person to eject his tenant must, as in the

[1] (1949) *51 N. L. R. 546.*

[2] *(1950) 51 N. L. R. 427.*

[3] *(1945) K. B. 562.*

case of any other landlord, be determined solely by reference to the reasonableness of his requirement for occupation of the premises at the relevant date. In my opinion the circumstances in which the plaintiff came to enjoy the status of a landlord cannot affect the issue one way or the other. It is the reasonableness of his present requirement for the premises which the Court must adjudicate upon.

Mr. Jayawardene argued that the words " in the opinion of the Court " appearing in section 8 (c) of the Rent Restriction Ordinance make the trial Judge the final arbiter in determining the difficult questions arising from the competing claims of landlord and tenant. This is certainly the view taken by the Court of Appeal in regard to analogous proceedings in England, subject, of course, to the right of the appellate Court to interfere where the trial Judge has misdirected himself. (Vide *Coplans v. King* [1]). As I have not had the advantage of a full argument on this point, I am content to assume for the purposes of this appeal—although I do not hold—that this principle should be adopted in Ceylon. In my opinion, for the reasons which I have already given, the learned Commissioner's judgment in the present case is vitiated by a clear misdirection in law, and I am satisfied that but for that misdirection he would himself have entered judgment in favour of the plaintiff. I accordingly allow the appeal and enter judgment in favour of the plaintiff as prayed for with costs here and in the Court below. Justice demands, however, that in order to mitigate the hardship which the order for ejectment will undoubtedly cause to the defendant, he should be given reasonable time within which to make other arrangements for the accommodation of himself and his family. I accordingly order that the writ of ejectment should not issue until January 1, 1951.

In making this order, I am aware that in *Yoosuf v. Suwaris* [2], my brother Basnayake questioned the legality of an order suspending the operation of a decree for ejectment in rent restriction cases except by consent of parties. I respectfully agree that where a Court has decided that the present requirement of a landlord for his premises is reasonable it is quite fantastic to make an order that he should nevertheless be deprived of possession for a very long period. On the other hand, there is precedent in England for suspending an order for ejectment for a short time so as to mitigate the hardship caused to the tenant, and it does not seem to me that these precedents can be traced to the differences in language which undoubtedly exist between the English Act and the local Ordinance. In both countries the question of reasonableness must be determined by reference to existing conditions, but, as Scott L.J. points out in *Wheeler v. Evans* [3], " it is obvious that consideration of the question of hardship must, to some extent, include the future as well as the present ". In the same case, Asquith L.J. said, " An order for *immediate* possession may cause greater hardship to the tenant than its refusal would to the landlord, yet it may be that if the order were suspended for (a short time) it would cause less hardship to the tenant than its refusal would to the landlord ". The Court of Appeal accordingly upheld an order in favour of the landlord upon the condition that the order should be

[1] *(1947) 2 A. E. R. 393.*

[2] *(1950) 51 N. L. R. 381.*

[3] *(1949) L. J. R. 1022.*

suspended for a period of four months. I see no compelling reason why the Courts in this country should be precluded from making similar orders when justice requires that they should be made.

Appeal allowed.