1957 *Present:* H. N. G. Fernando, J.

K. P. BAGAWATHIYA PILLAI, Appellant, *and* M. H. ZAHEED *et al.*, Respondents

*S. C. 69—C. R. Colombo, 57,670*

*Rent Restriction Act, No. 29 of 1948—Joint landlords—Requirement of leased premises for purposes of trade or business—Tenant's liability to be ejected.*

Where there are two or more joint landlords ejectment of the tenant cannot be sought by them under the Rent Restriction Act on the ground that they require the premises for the purposes of trade or business unless they can show that all of them jointly carry on the same trade or business and require the premises for the purposes of their joint venture or that each of them requires the premises for the purpose of his separate trade or business.

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

*H. V. Perera, Q.C.*, with *T. Arulanantlian* and *Miss Maureen Seneviratne*, for the defendant-appellant.

*Sir Lalita Rajapakse, Q.C.*, with *M. L. de Silva* and *Carl Jayasinghe*, for the plaintiffs-respondents.

*Cur. adv. vult.*

June 27, 1957. H. N. G. FERNANDO J.—

The plaintiffs in this case are two brothers who seek to eject the defendant from premises of which they are admittedly the landlords. The plaintiffs averred in their plaint that the premises "are reasonably required by them for their use and occupation, for their business, and/or professional use".

[1] (1883) 6 S. C. C. 76.

The 1st plantiff is a Proctor who fears impending ejectment from the office occupied by him of which the landlord is the Council of Legal Education. The 2nd plaintiff is described as an Insurance Agent and Indenting Agent who at present has no proper office but is allowed to occupy an office belonging to a friend. The learned Commissioner has held that the 1st plaintiff's case is the more urgent and pressing one and has accepted the position that it is essential for the 1st plaintiff to be able to utilise the premises in suit for the purposes of a Proctor's office. In regard, however, to the needs of the 2nd plaintiff there is no proper finding, the Commissioner merely remarking that "he is not having a proper office". The 2nd plaintiff himself gave no evidence, and the extremely meagre material on record relating to his needs is quite insufficient to establish for the purposes of the Act that he reasonably requires the premises or any part of them for business purposes. The judgment in favour of the plaintiffs had necessarily to be based solely on the fact that the premises are required by the 1st plaintiff and if this fact does not entitle the plaintiffs to judgment, the defendant must necessarily succeed.

In *Corea v. Muttucumaru* [1] Gunasekara, J. had to deal with a case where there were two joint landlords and he held, following the English decision of *Mac Intyre v. Hardcastle* [2], that the two landlords could only obtain possession of the house *if it were required for occupation as a residence for both of them.* The reasoning of Asquith, L.J., in the English case, although it has the result of causing hardship to landlords, appears to me, with respect, to be beyond criticism. If, as my brother Gunasekara held, it must be shown that the joint landlords both reasonably require the premises when ejectment is sought for the purposes of occupation as a residence, it follows in my opinion that where joint plaintiffs rely on the ground of requirement for the purposes of trade, business, profession, vocation or employment, then only two views as to the operation of the section are possible, both of which are unfavourable to the plaintiffs in this case.

One view is that it must be shown that the joint landlords jointly carry on the same trade, business, profession, vocation or employment and require the premises for the purposes of the joint venture. The other possible view would be that if each landlord has a separate trade, business, profession, vocation or employment, then each of them must reasonably require the premises for the purpose of his business, trade, profession, vocation or employment.

In the present case it is not necessary for me to decide which of these views is the more acceptable because the plaintiffs have failed to establish a case which falls within either construction.

The appeal has to be allowed and the plaintiffs' action is dismissed with costs in both Courts.

*Appeal allowed.*

[1] *(1954) 56 N. L. R. 80.*

[2] *(1948) 1 A. E. R. 696.*