

1968

*Present: de Kretser, J.*

A. Z. M. AZHAR, Appellant, and Mrs. S. M. FERNANDO,  
Respondent

*S. C. 177/67—C. R. Colombo, 90125*

*Rent Restriction Act, as amended by Act No. 12 of 1966—Section 12 A (1) (b)—Subletting of a portion of rented premises—Burden of proof.*

Where, in an action instituted by a landlord to eject his tenant on the ground that the tenant has sublet a portion of the rented premises, the landlord's evidence is sufficient to establish a *prima facie* case of subletting, the burden is then on the tenant to furnish evidence in rebuttal.

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

N. S. A. Goonetilleke, with W. S. Weerasooria and M. S. Aziz, for the defendant-appellant.

D. R. P. Goonetilleke, with K. Shanmugalingam, B. S. Fernando and K. Jayasekera, for the plaintiff-respondent.

*Cur. adv. vult.*

October 10, 1968. DE KRETZER, J.—

The Commissioner in this case (Mr. Jayasundera) has accepted the evidence of the Plaintiff Mrs. S. M. Fernando and the two witnesses Vanheer and Endoris Hamy called by her. On that evidence he has held that it is proved that the Defendant had sub-let a portion of the premises No. 13, Daya Road, Wellawatte, of which she was the landlady and he the tenant, to one K. Sivanandan. He therefore has answered the issue No. 1 in the case "Has the defendant sub-let the premises or a portion thereof to one K. Sivanandan within the meaning of Section 12A (1) (b) of the Rent Restriction Act as amended by Act No. 12 of 1966?" in the affirmative and given Plaintiff a decree in ejectment. The Defendant has appealed, and his Counsel's submission is that even accepting the correctness of the findings of fact by the Commissioner, those facts are not sufficient to establish there was a sub-letting.

The facts that the accepted evidence establishes are:—

(1) That from about January 1965 there have been in these premises apart from the tenant, his wife, three daughters aged 16, 14 and 12 respectively and two sons, all Muslims, three Tamil people, viz., K. Sivanandan, his wife and his child aged 3.

(2) That these Tamil people were in occupation of the office room and the adjoining bedroom on the left hand side of the house as one faces the premises. This set of rooms had its own outside entrance. The office room was used by Sivanandan to give private tuition. The adjoining room which one entered from the office room also contained a kerosine oil cooker.

It was Gratiaen J. who pointed out in the case reported in 54 N. L. R. at Page 572 that in an action for ejectment on the ground that the tenant has sub-let a portion of the leased premises, the essential test is whether there is evidence from which one can infer that there is at least some part of the premises over which the tenant has by agreement placed the alleged sub-tenant in exclusive occupation. The portion sub-let should be capable of ascertainment as an identifiable entity occupied by the sub-tenant to the exclusion of the tenant. The two persons in this case who could speak with precision to the terms on which Sivanandan and his family were in occupation of these rooms, and the nature of that occupation are obviously Sivanandan and the Defendant. The Defendant did not call Sivanandan who was on his list of witnesses and aware that the allegation made by the Plaintiff was that he had sublet his office room and

bed-room to Sivanandan, made no attempt to explain the presence of Sivanandan and his family in these premises from January 1965 on any other footing—e.g. as boarders. The position that he took up was that these people were never there and he has been disbelieved on that point.

Once it is established that these people were in occupation of the premises, the fact that the Defendant did not contradict the allegation made that they were there as tenants, coupled with the other facts which I have set out earlier as established appear to me not only to render the inference permissible but also almost irresistible that Sivanandan was in occupation of these rooms as a sub-tenant of the Defendant and on payment of rent to him.

The appeal is dismissed with costs.

*Appeal dismissed.*