

1966

Present : Siva Supramaniam, J.

G. RANASINGHE, Appellant, and W. PODI FERNANDO and another,
Respondents

S. C. 41/66—C. R. Ratnapura, 7581

Rent Restriction Act (Cap. 274)—Section 9—Subletting—Joinder of tenant and subtenant as defendants—Permissibility.

Where a landlord bases his action for ejection on the ground of subletting in contravention of the provisions of section 9 of the Rent Restriction Act, there is no misjoinder in his joining the tenant and the subtenants as parties-defendants in the same action.

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

H. L. K. Karawita, for 2nd defendant-appellant.

W. D. Gunasekera, for plaintiff-respondent.

Cur. adv. vult.

November 14, 1966. SIVA SUPRAMANIAM, J.—

The 1st defendant was, during the relevant period, the tenant of the plaintiff in respect of the premises described in the schedule to the plaint, which was subject to the provisions of the Rent Restriction Act,

† (1963) 65 N. L. R. 494.

No. 29 of 1948. According to the plaintiff, the 1st defendant had sublet the premises to the 2nd defendant without her written consent in contravention of section 9 (1) of the said Act, and she instituted this action for the ejection of both defendants therefrom. The first defendant in her answer denied the sub-letting and stated that she had allowed the 2nd defendant to carry on his business temporarily in the said premises. On the other hand, the 2nd defendant, in his answer, took up the position that he was a tenant under the plaintiff. He also pleaded that the plaintiff's action was bad for misjoinder of parties and causes of action. The learned Commissioner of Requests gave judgment in favour of the plaintiff against both defendants. Only the 2nd defendant has appealed against the judgment.

The appeal was pressed on both grounds relied on by the 2nd defendant in the lower Court. I see no reason to disturb the learned Commissioner's finding of fact that the 1st defendant had sub-let the premises to the 2nd defendant.

As regards the plea of misjoinder, it is submitted that the proper procedure was for the plaintiff to have filed the plaint against the 1st defendant and then made an application to the Court under S. 18 of the Civil Procedure Code to add the 2nd defendant as a party. It is conceded that if the 2nd defendant had been so added the issues that would have arisen for determination between the parties were the same issues that were in fact determined by the Court in the present action and that the decree too would have been the same.

S. 9 (2) of the Rent Restriction Act (Cap. 274) provides that "where any premises or any part thereof is sublet in contravention of the provisions of sub-section (1), the landlord shall... be entitled *in an action* instituted in a Court of competent jurisdiction to a decree for the ejection from the premises of his tenant and of the person or each of the persons to whom the premises or any part thereof has been so sublet." In view of the terms of this sub-section, I am of the opinion that where a landlord bases his action for ejection on the provisions of section 9 of the Rent Restriction Act, there is no misjoinder in his joining the tenant and the subtenants as parties-defendants in the same action.

The learned Commissioner's decision is correct and I dismiss the appeal with costs.

Appeal dismissed.