1976 *Present :* **Sirimane, J., Wanasundera, J., and Colin-Thome, J.**

K. T. H. PIERIS, Appellant and M. DICKSON FERNANDO, Respondents

S. C. 467/73—*D. C. Panadura* 12168

***Rent** Act, No. 7 of 1972—Section 22(1)—Section 10(5) contrasted with Section 22(1)—Requirement of notice terminating tenancy.*

Where the Plaintiff instituted action to have her tenant (the defendant) ejected from the premises in suit on the ground that the condition of the premises let to the defendant had deteriorated owing to the acts or the neglect and default of the defendant, without previously giving a valid notice of termination of the contract of tenancy,—

Held : Section 22(1) presupposes a cause of action which can only be constituted when the landlord for lawful reasons severs the relationship of landlord and tenant. Section 22, therefore, deals only with a limitation on the power of the Court in respect of actions by a landlord to eject a tenant and does not provide a right to come into Court without terminating the tenancy.

APPEAL from a judgement of the District Court of Panadura.

R. C. Gooneratne for the Plaintiff-Appellant.

Defendant-Respondent absent and unrepresented.

Cur. adv. vult.

March 25, 1976. WANASUNDERA, J.—

The plaintiff-appellant filed this action to have her tenant, the defendant-respondent, ejected from the premises described in the schedule to the plaint, and for the recovery of a sum of Rs. 1,000 as damages sustained by her as a result of wanton damage caused to the premises by the defendant. The plaint was filed in July 1970, and an amended plaint was filed on the 31st of March 1972. By the latter date a new Rent Act, No. 7 of 1972, was in operation and the old Rent Restriction Act (Cap. 274) was repealed.

In the amended plaint the plaintiff stated that there was a contravention by the defendant of the provisions of section 12A(d) of the Rent Restriction Act, No. 12 of 1966, and also of section 22(1) (d) of the Rent Act, No. 7 of 1972. She alleged that the condition of the premises let to the defendant had deteriorated owing to the acts or the neglect and default of the defendant.

The defendant in his answer took up the pleas that—

(*a*) the plaintiff was not entitled to eject the defendant without a valid notice terminating the tenancy, and

(*b*) the cause of action was prescribed.

After trial the learned District Judge held that he was satisfied that there was deterioration of the premises caused by the defendant within the terms of section 22(1) (d) of the Rent Act. The learned District Judge, however, dismissed the plaintiff's action on the ground that she had failed to terminate the tenancy by a valid notice to the defendant to quit and deliver vacant possession of the premises to the plaintiff.

Mr. Gooneratne for the appellant argued that accepting the learned Judge's finding that the damage had been caused to the premises by the defendant, the learned District Judge erred when he held that the notice terminating the tenancy was necessary to enable the plaintiff to maintain the action. The authorities which he cited, *May's Trustee vs. Meyer,* 1904 T.S. 202, and Halsbury, Vol. 23, page 674, I find, deal mainly with the common law position in respect of leases and do not help to further the case of the appellant.

Under the common law, a monthly tenancy could be terminated by either party giving a month's notice of termination of the contract of tenancy. In respect of other letting for a longer and definite period, it would appear that the landlord is entitled to claim the cancellation of a lease prematurely, if the tenant commits a breach of his obligations such as the misuse or abuse of the leased property, or the failure to carry out any special obligations imposed on him by express agreement. A notice of termination of the tenancy, however, would be required in such a case.

The Rent Control Laws have given a great measure of protection to tenants and it is primarily the statutory provisions of the Rent Acts we have to consider in this case. In considering these provisions, it is however necessary to bear in mind that, though these provisions have primacy, they should be considered against the background of the common law. Section 22 of the present Rent Act (section 12A of the old Rent Restriction Act) seems to provide a limitation on the jurisdiction of the Court to entertain actions. The material words read as follows :—

> "....no action or proceedings for the ejectment of the tenant of any premises.....shall be instituted in or entertained by any court,....."

It seems to me that this wording clearly suggests that the provision is formulated in terms of jurisdiction only. They do not purport to dispense with such requirements of the general law as a need for a cause of action, etc., which alone would entitle a person to come into court and maintain an action.

The provisions of section 10(5) of the Rent Act (section 9(2) of the Rent Restriction Act) can be contrasted with those of section 22(1). Section 10(5) states that—

> "Where the tenant of any premises sublets such premises or any part thereof without the prior consent in writing of the landlord, the landlord of such premises shall, notwithstanding the provisions of section 22, be entitled in a court of competent jurisdiction to a decree for the ejectment of such tenant from such premises...."

These provisions expressly create a right in the landlord, upon the requirements being fulfilled, to come into court and obtain an order for the ejectment of the tenant. The difference between this section and the earlier section referred to is, that in this case the section provides the cause of action which enables the landlord to file action on the happening of the event. Section 22(1) on the other hand presupposes a cause of action which can only be constituted when the landlord for lawful reasons severs the relationship of landlord and tenant. Section 22, therefore, deals only with a limitation on the power of the court in respect of actions by a landlord to eject a tenant and does not provide a right to come into court without terminating the tenancy. In *Wimalasuriya vs. Ponniah*, 52 N.L.R. 191, Basnayake, J., held that no notice terminating the tenancy is required in the case of an unauthorised sub-letting. I find that this is undoubtedly correct on a plain reading of the relevant provisions.

In the present case the plaintiff has referred to two notices sent by the defendant in her plaint, but she did not lead evidence showing a notice validily terminating the contract of tenancy. In these circumstances I find that the order of the learned District Judge was correct when he dismissed the plaintiff's action on this ground. I would accordingly dismiss this appeal.

As the respondent was not represented at the hearing of this appeal, I make no order as to costs.

SIRIMANE, J.—I agree.

COLIN-THOME, J.—I agree.

Appeal dismissed.