

1968

Present: Sirimane, J.

S. J. QUYN, Appellant, and M. M. IBRAHIM, Respondent

S. C. 144/67—C. R. Colombo, 91153/R. E.

*Rent Restriction Act—Landlord carrying on business in partnership in his premises—
Whether his partners can remain in occupation of the premises after termination
of partnership.*

Where a landlord of rent-controlled premises who carries on a business in partnership in the premises permits a partner to occupy or use the premises during the continuance of the partnership, the latter is not entitled to remain on the premises after the termination of the partnership, after he has been given due notice to quit.

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

B. J. Fernando, with *Gamini Dissanayake*, for the plaintiff-appellant.

T. Nadarajah, for the defendant-respondent.

Cur. adv. vult.

September 25, 1968. SIRIMANE, J.—

The plaintiff is the tenant of premises No. 480, Skinners Road South, Colombo, and carried on business there alone. In 1959, he entered into a deed of partnership (P1) with the defendant and certain others, and agreed, *inter alia*, not to prevent the defendant and the others from

occupying or using the premises during the continuance of the partnership. The defendant, therefore, entered into occupation of the premises as the licensee of the plaintiff.

After the lapse of two years, the partnership was renewed by (P2) which is in similar terms.

The plaintiff thereafter, in February, 1965, by (P3) terminated the partnership and requested the defendant to quit the premises.

The defendant in his original answer pleaded that he was a tenant under the plaintiff and sought the protection of the Rent Restriction Act.

In his amended answer he abandoned that position, and averred that *the partnership was terminated* on 24th of May, 1963, by an Agreement, but that according to that Agreement (which was produced marked D1) the plaintiff was estopped from instituting this action. So that both parties were agreed that the partnership has been terminated, but they were only at variance in regard to the date of termination. The learned Commissioner was, therefore, wrong in holding that the partnership was still in existence.

The defendant's claim to remain in occupation was based solely on D1 of 1963. By this document the plaintiff agreed not to claim any sum whatsoever from the business and also agreed to the defendant carrying on the business by himself. The plaintiff stated in evidence that he signed D1, without any consideration, only to enable the defendant to raise a loan on the footing that he was the sole owner of the business. The defendant, on the other hand, stated that he paid a sum of Rs. 6,000 to the plaintiff on D1.

The learned Commissioner found the evidence of both the plaintiff and the defendant relating to D1 very unsatisfactory, and stated that he could not act on the evidence of either.

One has, therefore, to look at the document D1 itself. I can see nothing in this document by which the plaintiff surrendered his right to possession of the premises to the defendant.

The learned Commissioner thought that the decision in *Mohamed v. Sahul Hameed*¹ applied to this case and dismissed the plaintiff's action on that ground. The decision there was that one partner as landlord could not sue the other partners as tenants for rent and ejection in respect of premises where the business of the partnership is carried on.

In this case the partnership had been terminated.

In my view, the defendant was in occupation of the premises only as the licensee of the plaintiff so long as the partnership subsisted. On its termination (and that was the case for both parties) he was no longer entitled to remain there after the plaintiff had given him due notice to quit.

¹ (1949) 51 N. L. R. 86; 40 C. L. W. 61.

The order dismissing the plaintiff's action is set aside, and I direct that judgment be entered in favour of plaintiff for ejection of the defendant.

The plaintiff had claimed Rs. 150 per month as damages from 28.6.66. There is no evidence to support this claim. The evidence discloses that the monthly rent of the premises was Rs. 35. The plaintiff will be entitled to damages at that rate from 28.6.66. The plaintiff is also entitled to the costs of this action.

Appeal allowed.
