

1952

Present : Pulle J./
 ISMAIL, Appellant, and WETTESINGHE, Respondent*S. C. 171—C. R. Colombo, 25,394**Landlord and tenant—Installation of electricity by tenant—Liability of landlord—
“Improvements”.*

The installation of electricity by a tenant cannot be regarded as necessary “repairs”, the value of which can be claimed from the landlord.

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

H. W. Jayewardene, for the plaintiff appellant.

H. W. Tambiah, for the defendant respondent.

Our. adv. vult.

April 24, 1952. PULLE J.—

In this action the landlord sought to eject the tenant on the ground that the latter had carried out unauthorized structural alterations causing damage to the premises. The tenancy agreement was recorded in a writing dated 9th December, 1948, and it took effect from 1st December, 1948. The learned Commissioner came to the finding that the alterations

¹ *Ponnamma v. Arumugam* 8 N. L. R. 223 at 226, P.C.

were made prior to the commencement of the tenancy when the tenant held the premises under one Samuel Nadar, who was himself a tenant under the landlord, and therefore refused to grant a decree of ejectment. There was ample evidence on which the Commissioner could have reached that finding and the landlord's appeal fails on this point.

In his defence the tenant claimed in reconvention the sum of Rs. 300 on the ground that he had "effected certain necessary repairs to the premises with the knowledge and consent" of the landlord. This claim was allowed by the learned Commissioner on the ground that the tenant had installed electric lighting costing Rs. 300. The question arises whether electric wiring fitted to a house and the lamps constitute movable or immovable property. If it is the former, they cannot properly be regarded as "improvements" in applying the law as to compensation to which the improver becomes entitled. The case of *Chiniyah v. Mohamedtamby*¹ holds that electric lights installed in a boutique by a tenant cannot be regarded merely as ornamental improvements, but whether electric wiring and lamps constitute fixtures and not movable property is not discussed.

I am of the opinion that the claim in reconvention should have been disallowed for the following reasons:—

- (a) The tenant applied for electricity and obtained a supply when his contract of tenancy was not with the landlord but with Samuel Nadar. The application for electricity was dated 26th July, 1948, electricity was supplied on 6th November, 1948, but the contract of tenancy with the landlord commenced only on 1st December, 1948.
- (b) The installation of electricity by a tenant cannot be regarded as necessary "repairs", the value of which can be claimed from a landlord. Even if it can be so regarded, I fail to see how its value can be recovered from a person who at the relevant time was not the landlord but the owner who had let the premises to a third party under whom the present tenant became a sub-tenant.
- (c) Electricity was applied for and obtained by the tenant to suit the peculiar business requirements of the firm called "Electrons".

While the landlord may have known before the contract of tenancy was entered into that during the sub-tenancy the premises were fitted with electricity, there is no evidence that he consented to what was done during the sub-tenancy. It would be singularly inequitable that the landlord should pay the present value of electrical connections to a tenant who is entitled to occupy the premises indefinitely against the landlord by virtue of the Rent Restriction Act.

I would vary the decree appealed from by setting aside that part of it which orders the plaintiff to pay Rs. 300 to the defendant and the costs of action.

Each party will bear the costs both here and below.

Decree varied.

¹ (1932) 1 C. L. W. 228.