1975 *Present :* **Tennekoon, C. J., Vythialingam, J., and Gunasekera, J.**

MRS. T. L. JAYATUNGA, Appellant, *and* MRS. V. A. ROSALINAHAMY, Respondent.

S. C. 237/70 (*F*)—*D. C. Colombo* 12196/*L*

Rent Restriction Act (Chapter 274)—Premises in suit subject to fideicommissum—Tenant came into occupation under fiduciary—Death of fiduciary—Fideicommissary successors became owners —Definition of " landlord " and applicability of Section 13 of Act.

" A. F." was the original owner of the premises in suit. By his Last Will he bequeathed the premises to his daughter ' M. F ' subject to a fideicommisum in favour of the children of ' M.F. '. ' M.F.' died on 23.04.68 and her children, the 1st to 6th Plaintiffs became owners of the premises as fideicommissary successors. The defendant originally came into occupation of the premises as a monthly tenant under ' M.F. '. On 30.06.68 the plaintiffs filed action for declaration of title and ejectment of the defendant, on

the basis that the contract of tenancy with 'M.F.' ,the (fiduciary) came to an end with the extinction of the fiduciary rights and that the defendant had therefore become a trespasser. The premises were admittedly governed by the Rent Restriction Act No. 29 of 1948 (Chapter 274) and its amendment, then in force. The defendant claimed the protection of the said Act and prayed for a dismissal of the action.

Held, (*Gunasekera J, dissenting*) that the plaintiffs are not barred from maintaining the action inasmuch as they do not fall within the meaning of the term "landlord" as defined in the Rent Restriction Act. Section 13 of the said Act can have no application to one who was neither the original common law landlord nor his successor in title.

"Under the common law applicable in this branch of our law, the relationship between a landlord and a tenant is a contractual one ..... The contract of letting is ordinarily unrelated to the ownership of property being in the landlord ..... It seems to me therefore that when Rent Restriction Act defines the term "landlord" as the person for the time being entitled to the rent of such premises, it is referring in the first place to the person entitled under the contract of tenancy to receive the rent and not necessarily to the true owner who may not, in relation to a particular tenancy of the premises in question, have been the person who let the premises." *per Tennekoon, C. J.*

APPEAL from a judgment of the District Court, Colombo.

C. Ranganathan with *Lalith Athulathmudali* for the Plaintiff-appellants.

M. T. M. Sivardeen for the defendant-respondent.

Cur. adv. vult.

October 22, 1975. TENNEKOON, C. J.—

I have had the advantage of reading the judgments prepared by my brothers Vythialingam, J. and Gunasekera, J.

One Anthony Fernando was the original owner of the premises in suit. By his last will he bequeathed the premises to his daughter Mary Fernando subject to a *fidei commissum* infavour of the latter's children. Mary Fernando died on 23.4.68 and her children the 1st to 6th plaintiffs became owners of the premises as *fidei commissary* successors. The defendant-respondent originally came into occupation of the premises as a monthly tenant under Mary Fernando. After the death of Mary Fernando the defendant-respondent tendered rent to the plaintiff-appellants but they refused to accept the rent or the position that the defendant-respondent became their tenant upon the death of Mary Fernando.

The plaintiff-appellants thereupon sued the defendant for declaration to title, ejectment and damages. The defendant contended that upon the death of Mary Fernando, she continued

as a tenant of the plaintiffs and claimed the protection of the Rent Restriction Act (Cap, 274) in particular section 13 thereof. It seems to me patent that section 13 is a limitation of the right of a *landlord* to institute or maintain an action against a tenant and is not a limitation of the right of other persons, who do not fall within the meaning of the term "landlord" as used in the Act, to maintain an action against a person in occupation of premises and claiming to be tenant of some other persons. As was said by Gratiaen, J. in *Britto vs. Heenatigala,* 57 N.L.R. 327.

> "If, therefore, the true owner of the leased premises vindicates his title against the contractual lessor, the statutory protection which the tenant enjoyed against his lessor would not be available against the true owner."

It seems to me that the essential question to be decided in this case is whether the plaintiff-appellants fall within the meaning of the term "landlord" as defined in the Rent Restriction Act. That definition reads as follows:—

> "Landlord", in relation to any premises means the person for the time being entitled to receive the rent of such premises and includes any tenant who lets the premises or any part thereof to any sub-tenant.

Under the common law applicable in this branch of our law, the relationship between a landlord and a tenant is a contractual one; the landlord and the tenant, each enjoys under such contract certain rights and obligations. The contract of letting is ordinarily unrelated to the ownership of the property being in the landlord, for a valid lease may be granted by the owner or by a person having no right to the property. It seems to me therefore that when the Rent Restriction Act defines the term "landlord" as the person for the time being entitled to receive the rent of such premises, it is referring in the first place to the person entitled under the contract of tenancy to receive the rent and not necessarily to the true owner who may not, in relation to a particular tenancy of the premises in question, have been the person who let the premises. A person who has no right whatsoever, whether absolute or limited, to immovable property may nevertheless make a lease of such property. Such a lease is valid as between the landlord and tenant but it does not follow that it is valid or effectual against the true owner of the property.

Then the plaintiff-appellants do not in my view fall under the definition of the term landlord by reason merely of the fact that upon Mary Fernando's death they as *fidei commissary* heirs became owners of the premises. They might have become the landlords if Mary Fernando had it in her power to grant a lease

of the premises extending beyond her life-time but that is exactly what she, being only the fiduciary, could not do.

Much reliance was placed by counsel for the defendant-respondent on section 13 of the Rent Restriction Act. This section applies only to landlords and includes also a person usually referred to as a statutory landlord, i.e. a person who *was* the commonlaw landlord but who has terminated the contract but is compelled by the Act to discharge the obligations of a landlord because that very section prevents him, unless he can satisfy the terms of the proviso, from instituting action for ejectment of the tenant. Section 13 can have no application to one who was neither the original commonlaw landlord nor his successor in title.

In the result I find myself unable to agree with my brother Gunasekera, J. I agree with the judgment of my brother Vythialingam, J. and the order proposed by him.

VYTHIALINGAM, J.—

The plaintiffs-respondents sued the defendant for a declaration that the plaintiffs were entitled to the land and premises subject matter of the action, for the ejectment of the defendant and for damages alleging that the defendant was in unlawful and wrongful possession of the land and premises. The defendant resisted the claim of the plaintiffs on the ground that she was the tenant of the premises by operation of law and claimed the protection of the Rent Restriction Acts. After trial the learned District Judge entered judgment for the defendant and dismissed the plaintiffs' action. The plaintiffs appeal against the judgment and decree.

According to the plaintiffs one Jayawickremage Antony Fernando was the original owner of the premises in suit. He by last Will No. 144 of 25.7.1922 bequeathed the said premises to his daughter, Mary subject to a fidei commissum in favour of her children. Mary Fernando died on 23rd April, 1968 and the 1st to 6th plaintiffs as her children became the absolute owners of the premises. This position is not contested by the defendant and it could not have been contested by her consistently with her claim to be the tenant of the premises. At the trial it was admitted that the defendant was the contractual tenant of Mary Fernando and that after her death she sent the rents to the plaintiffs who refused to accept the same.

Under our law a fiduciary is entitled to the beneficial use and enjoyment of fidei commissary property for he possesses an actual though burdened ownership. In *Baby Nona et al Vs.*

Silva 9 *N.L.R.* 251 which held that an amicable partition of the fideicommissary property by the fiduciaries was binding on the fideicommissary heir, Middlton, J, said at page 256 "A fiduciarius has, it is true, a real though burdened right of ownership which may or may not develop into plenum dominium". He could therefore, hire out the premises but only for the duration of his interests but not longer.

In the case of *Fernando Vs. de Silva* 69 *N.L.R.* 164 it was held that the death of the landlord does not terminate a monthly tenancy. Manickvasagar, J. after citing a passage from Pothier said at page 165, "He gives two exceptions to this general rule, which is accepted by the writers of Roman Dutch Law that

(1) where the lessor's title was one for his life only, such as a fiduciary interest or life usufruct, the death of the lessor terminates the lease;

(2) where the lease is at the will of the lessor or lessee death of the lessor or the lessee as the case may be terminates the lease."

It was pointed out to us that the passage from Pothier does not refer to a fiduciary. But the statement of the law is amply borne out by text writers and decided cases. Prof. Nadarajah whose work on *The Roman Dutch Law of Fidei Commissa* is generally accepted as authoritative both in South Africa and Ceylon says at page 142, "The fiduciary may lease the property, the lease being valid for the duration of his interest but not longer." Wille on *Landlord and Tenant in South Africa* (Fourth Ed.) points out at page 19 "A fiduciary of land under the simplest of testamentary fidecommissum namely where the property is to pass to the fideicommissary on the death of the fiduciary is in the same position as a usufructuary and therefore, his right to grant leases is similar. Consequently if a fiduciary grants a long lease and dies before the expiration of the term the fideicommissary is not bound by the lease." This is of course subject to the terms and conditions contained in the instrument creating the fidei commissum.

Consequently immediately on the death of the fiduciary the fideicommissary can vindicate his right to the property against a trespasser for in the modern law there is no need for restitution. Prof. Nadarajah points out at page 143. "In the modern law, it would seem that in all cases the transfer of ownership takes place automatically at the time prescribed by the testator for the vesting of the fideicommissary's interest and the fideicommissary is entitled from that time to the use and enjoyment of the property and to enforce his claims to the

property against the fiduciary, his representative or other possessor."

In the case of *Sithy Naima Vs. Ganny Bawa* 32 *N.L.R.* 155 the deed creating the fideicommissum prohibited a lease for a period more than five years. But it did not provide any penalty or forefeiture for a contravention of that clause. The fiduciaries leased the premises for seven years. It was held that on the death of the fiduciary pending the lease the fideicommissary heirs were entitled to take possession immediately. Maartensz, A. J. said at page 156 " And I do not think that the limitation can be construed into an enlargement of the rights of the fiduciary heir so as to bind the fideicommissary heirs after the death of the donee.....for, unless possession has been postponed by the terms of the deed or will a fideicommissary heir succeeds to the fiduciarius on the latter's death. No particular words are necessary to create that result."

In the South African case of *Eksteen et al Vs. Pienaar et. al* 1969, 1 *S.A.L.R.* 17, T became entitled to certain property subject to the condition that on her death and that of her husband the farm would devolve on her lawful descendants and if there were none, then in three equal shares on the lawful descendants of three named persons. T's husband predeceased her as did two of the three named persons. There were no children. As a result of two of the fideicommisary heirs predeceasing her T became entitled absolutely to a two-third share and the balance one-third remained in the third fideicommissary heir. T left a will by which she bequeathed her shares to certain legatees.

During her life time she had leased out certain portions to the defendants and at the time of the death the lease had not expired. In an action against the defendants for ejectment by the executors it was held that they could not maintain the action as far as T's two-third share was concerned as the lease had not expired and in regard to the one-third share of the fidei commissary only he could maintain the action and T's executors had no interest in respect of it. Smit, J.P. said at page 19 " A fiduciary, like a usufructuary who has left property subject to usufruct may let the property subject to his rights only for the period of his own rights. Any portion of the lease beyond such period is not binding on the owner of the property (Voet 19.2.16; Huber 3.9.6.). Therefore on the death of the deceased the lease relating to that portion of the said farm which is subject to the fideicommissum came to an end. The owners in the case of the fidei commissum which has matured are without a doubt the fideicommissaries themselves and not the fiduciary's estate.....The claim can be enforced against any wrongful possessor of the property."

In the instant case therefore the plaintiffs as fideicommissary heirs are not bound by the contract of tenancy entered into by the fiduciary Mary Fernando with the defendant and immediately on her death the plaintiffs became entitled to the absolute use and enjoyment of the property and can v ndicate their rights against the defendant who in relation to them is in the position of a trespasser. It is contended that this common law right of the plaintiffs has been barred by the Rent Restriction Act which admittedly apply to the premises in suit. It is therefore necessary to examine this position.

But before proceeding to do so certain preliminary observations have to be made in regard to the Rent Restriction Act. It is a piece of social legislation the twin objects of which are the restriction of rents to manageable levels and to provide security of tenure for the tenant and the maintenance of amenities hitherto enjoyed by him. It has, therefore, to be given a beneficial interpretation so as to render workable the statutory provisions which the legislature has specially enacted for the protection of tenants. The rules of normal logic must not be applied with too great strictness.

In the case of *Baker Vs. Turner,* 1950 *A.C.* 401 (*at* 417) Lord Porter pointed out "As Scrutton, L.J. has more than once pointed out, they must be viewed in the light of their a'm and object and it must always be remembered that the difficulty in construing them is enhanced by the fact that words and phrases apt to describe the relationship of a common law land lord and tenant one to another have been used without specific definition of another and statutory relationship, viz, that of a protected tenant or sub-tenant to his immed'ate or perhaps remote landlord."

Then again Evershed, M.R. observed in *Marcroft Wagons Ltd., Vs. Smith* 1951 2 *K.B.* 496 *at* 502 "Bankes, L.J. in Remon's case .....said 'In no ordinary sense of the word was respondent a tenant of the premises on July 2nd. His term had expired. His landlord had endeavoured to get him out. He was not even a tenant at sufferance. It is however clear that in all the Rent Restriction Acts the expression tenant has been used in a special or peculiar sense and as including a person who might be described as an ex-tenant, someone whose occupation had commenced as tenant and who has continued in occupation without any legal right except possibly such as the Act themselves conferred upon him."

In the case *Weerakoon Vs. Fernando* 76 *N.L.R.* 111 which was a case under the Protection of Tenants Act No. 28 of 1970,

Weeramantry, J. said at page 114 "Many of the provisions of the Rent Restriction Act which speak of a tenant are in fact provisions referring to a person who has once enjoyed the status of a tenant but has ceased to be a common law tenant whereupon the law looks upon him as nevertheless a tenant in the eye of the statute and calls him a statutory tenant in order that the Act may be rendered workable. Reference to this matter would be found in a series of judgments of this Court and I need only refer in this connection to the judgment of Keuneman, J in *Gooneratne Vs. Thelenis* 49 N.L.R. 433 wherein he held that the word tenant in proviso B to section 8 (now section 13) of the Act must be taken to cover not only a tenant who is in fact so at the time but also a person who had at one time occupied the position of a tenant even though at the time of action the tenancy was no longer in existence."

However, although it is undoubtedly true that wherever possible the Act should be construed in a broad, practical, commonsense manner, so as to effect the intention of the Legislature nevertheless one must be cautious not to extend, under the guise of interpretation, the scope of the Act to matters beyond what its language was intended to cover. The Act did not alter the common law in regard to landlord and tenant except to the extent it expressly provides for. If it was intended to do so it must be stated in clear and unambiguous language. As Craies states at page 121 in his *Statute Law, 7th* Ed. ' To alter any clearly established principle of law a distinct and positive enactment is necessary."

"It is clear that if it was the intention of the legislature in passing a new statute to abrogate the previous common law on the subject the statute must prevail, but there is no presumption that a statute is intended to override the common law. In fact the presumption, if any, is the other way, for, the general rule in exposition is that in all doubtful matters and where the expression is in general terms, the words are to receive such a construction as may be agreeable to the rules of the common law in cases of that nature for statutes are not presumed to make any alteration further or otherwise than the Act does expressly declare" (449). Indeed as pointed out by Jayatilleke. C.J. in *de Alwis Vs. Perera,* 52 *N.L.R.* 433 *at* 446. "In this connection it is relevant to point out that where the Act does intend to interfere with the operation of the common law it does so in express terms. But it would be unsafe to infer an intention on the part of the legislature to abolish a right of action under the common law unless such an intention is either expressed in the law or arises by necessary implication."

The Act does not confer on the courts any new jurisdiction. As Gratiaen, J. pointed out at page 444 in the same case, "It is important to bear in mind in considering this question that section 8 of the Rent Restriction Ordinance of 1942 and section 13 of the Act of 1948 which superceded it were not designed to vest in Courts of Law some new jurisdiction affecting the rights and obligations of Landlords and tenants in actions for ejectment. On the contrary, as Keneuman, J. pointed out, they merely impose a curb or fetter on the existing jurisdiction to grant relief to a landlord who seeks, in the enforcement of his contractual rights under the common law a decree for the ejectment of his tenant from the premises in the latter's occupation. "

Are there then any statutory fetters barring the plaintiffs from bringing this action for the ejectment of the defendant ? The only section in the Rent Act which we have been referred to and on which the learned District Judge placed reliance is the defining section 27 which defines landlord in relation to any premises as meaning the person for the time being entitled to receive the rent of the premises. It is argued therefore that the plaintiffs as the owners are the persons entitled to receive the rent and that their right to claim a decree for ejectment is restricted by the conditions imposed by section 13 of the Act.

Apart from defining the term landlord as the person who for the time being is entitled to receive the rent the Act does not state who the person is who is entitled to receive the rent. To determine that question we must look to the common law. It is not the owner who is necessarily or always the person who is entitled to receive the rent. Letting and hiring and the relationship of landlord and tenant arise purely from contractual relationship and has nothing whatever to do with ownership. "The fact that he was not the owner of the premises is irrelevent because his rights are founded on contract and not ownership", per Gratiaen, J. in de Alwis' case (supra) at page 448. Jayatilleke, C.J. pointed out in the same case " Under the common law all things may be the subject of the contract of letting or hiring whether they belong to the lessor or are the property of a third party since lease does not affect the ownership of the thing let (Voet 19.2.34), " at page 436.

That was a case in which a Divisional Bench by a majority held overruling Hameed vs. Annamalay, 47 N.L.R. 558 that a husband who lets out his wife's property is entitled to maintain an action for the ejectment of the tenant on the ground that he

reasonably required the premises for his own use although he did not have a real right in the property. An owner of a property does not by virtue of his ownership necessarily become the landlord where it has been hired out by a third person.

In the case *Viswalingam vs. Gajaweera* 56, N.L.R. 111, the appellant was not the owner of premises ; he only claimed to have taken them on rent himself on an oral agreement entered into with the owner. It was held that though section 26 of the Rent Restriction Act, No. 29 of 1948 on which the respondent's Counsel relied seemed to enable the owner in such a case to claim that he was the landlord of the sub-tenant and that section 27 of the Act clothes the appellant also with the character of a landlord.

Cases like *Annamalai Chettiar vs. Creasy et al* 56 N.L.R. 477 in which a purchaser was deemed to be the landlord of a tenant already in occupation as such at the time of the purchase are not relevant for the present purpose as in such cases, provided the tenant is willing to pay him rent the purchaser steps into the landlord's shoes and receives all his rights and becomes subject to all his obligations so that he is bound to the tenant and the tenant is bound to him in the relationship of landlord and tenant. In the instant case the plaintiffs cannot be said to have stepped into the shoes of Mary Fernando the original land lord as they do not receive title through or from her but derive title independently of her from the original testator.

In the case of *Abdul Cader et al Vs. Habibu Umma* (28 N.L.R. 92) it was held that possession which commenced before the accrual of a fidei-commissary's right is not adverse against the fideicommissary. Jayawardena, A. J. said at page 95. "The reason is that the fideicommissary does not claim under the fiduciary but under the will or deed by which the fideicommisum in his favour is created. The fiduciary can during his lifetime deal with the property as he likes but the rights created by him terminate at his death and cannot prejudice the fideicommissary." In *Mendis Vs. Dawood* (22 N.L.R. 115) Ennis, J. said at page 117 ".....the first plaintiff and the other plaintiffs are not parties to the agreement nor successors to any of the parties to the agreement as they derive title from the original will of Maria Fernando and not by succession to any of the parties."

In this respect a close analogy is provided by partition decrees which created new title in the parties. In the case of *Bernard Vs. Fernando,* (36 *N.L.R.* 438) de Sampayo, J. said at page 439

"partition decrees are not like other decrees affecting land, merely declaratory of the existing rights of the parties inter se. They create a new title in the parties absolutely good against all the world." In the case of *Britto Vs. Heenatigala,* 57 *N.L.R.* 327 Gratiaen, J. commenting on this passage said at page 330. "I think it admirably explains the effect of a final decree for partition whereby a co-owner receives in lieu of his former undivided interests, absolute title to a divided allotment of the common property."

In that case it was held that the statutory protection of a tenant under the Rent Restriction Act is not automatically extinguished if the leased premises are purchased either by a co-owner or by a third party in terms of a decree for sale under the partition ordinance. This is because "A decree for sale under section 4 expressly declares that the common property belongs to certain specified co-owners in certain specified proportions and then proceeds to order a sale of the property by public auction. In such a situation it is the title of the persons declared to be co-owners which is put up for sale.....Upon the issue of the certificate of sale to the purchaser under a decree for sale, the title declared to be in the co-owners is definitely passed to the purchaser ..... Accordingly the purchaser's title is in truth a title derived from the persons declared to be the co-owners of the property. If therefore, they had been the tenant's landlord within the meaning of the Act their statutory status was transferred to him by operation of law." Per Gratiaen, J.

In that case it was sought to be argued that the purchaser at a sale held under the Ordinance acquires a title paramount which is not in truth a title derived from the person declared in the decree to be the co-owner, and that there is no nexus by derivation from the co-owner (the tenant's lessors) sufficient to give him the status of a landlord. It was held that de Sampayo's analysis did not, for the reason stated above, apply to a sale under the Partition Ordinance. But Gratiaen, J, pointed out "at the same time I agree entirely that it would be quite wrong to include within the definition of landlord any person other than original lessor or someone who derives his title from the original lessor. If therefore, the true owner of the leased premises vindicates his title against the tenant's contractual lessor, the statutory protection which the tenant enjoyed against the lessor would not be available against the true owners."

In the case of *M. M. Ranasinghe vs. C. A. C. Marikkar* (73 N.L.R. 361) which is a decision of a Divisional Bench of five Judges the decision in *Britto Vs. Heenatigala* was expressly approved and the decision to the contrary in Heenatigala, *Vs.*

Bird, 55 N.L.R. 277 was overruled. But it was held in that case that if rent controlled premises are owned by co-owners and one of them lets the entirety of the premises without the consent or acquiescence " of the other co-owners, the protection of the Rent Restriction Act is not available to the tenant as against a purchaser who buys the premises subsequently in terms of an interlocutory decree for sale entered under the Partition Act. In such a case the tenant cannot resist an application by the purchaser to be placed in possession of the premises.

In that case Samarawickreme, J. said at page 375 " As a tenant's rights are derived from and dependent on the title of the person from whom he gets his tenancy, the rights of a tenant under one co-owner are subject to the prior right of the other co-owners to compel a division of the property by partition or sale. Where there is a partition his rights will be restricted to the divided portion obtained by the co-owner who gave him the tenancy." If the submisssions here contended for were correct namely that the owner as the person entitled to receive the rent is deemed to be the landlord irrespective of any nexus between him and the person in possession then these decisions could not have been arrived at because each of the other co-owners as the person entitled to receive the rent would have been deemed to be the landlord and so barred from bringing an action to eject the tenant.

It is not sufficient to distinguish that case to say that one co-owner has no right to hire out the entirety of the co-owned property without the consent or acquiescence of the other co-owners for here too the fiduciary has no right to hire out the premises for a period beyond the duration of his interests. It is but right to point out that the position as laid down in these cases has now been altered by express provision in the new Rent Act 7 of 1972 by Section 14 (1) which sets out that the tenant of any residential premises which is purchased by any person under the Partition Act or which is allocated to a co-owner under a decree for partition shall be deemed to be the tenant of such co-owner or purchaser.

In the instant case the gift over was to take place on the death of the fiduciary. But there may be cases in which the gift over may be expressed to take place on the happening of an event even during the life time of the fiduciary. In such a case on the happening of the event the fideicommissaryheirs become immediately entitled to the use and occupation of the fideicommissum property and can vindicate their rights against the fiduciary. In such case if the fiduciary has hired out the property then on the fideicommisary vindicating his rights against the

fiduciary the tenant becomes evicted by title paramount. The position is not different where the gift over takes place on the death of the fiduciary. There is nothing in the Rent Act which expressly or by necessary intendment abrogates this position under the common law.

Dealing with English Rent Acts Meggary in the Rent Acts 10th Ed. Vol. I says at page 199 " Indeed he (a statutory tenant) has been said to have a right which avails against all the world, yet he appears to be unprotected against those claiming by title paramount if the contractual tenancy out of which his statutory tenancy arose would have afforded him no protection." He cites as authority for this proposition the case of *Dudley and District Benefit Building Society vs. Emerson* 1949 *Ch. Division.*

In that case a person mortgaged the premises to the plaintiffs and thereafter contrary to an express provision in the deed he rented out premises to the tenant. He fell into arrears in the payment of the loan instalments and plaintiffs sued. The tenant took up the position that he was protected by the Rent Acts. It was held that the tenancy was valid and lawful as between the mortgagor and the tenant but did not bind the plaintiffs as mortgagees. Evershed, M. R. said at page 716. " They are not his landlords ; they have never accepted his tenancy as one which binds them, and it is quite clear that there is no contractual relationship between Goodlad and the plaintiffs, either imported by the statute or otherwise. "

It was argued in that case that as a landlord is defined in the Rent Acts to include also a person, in relation to any dwelling house, other than a tenant who is or would, but for the Act be entitled to possession of the dwelling house, that the mortgagee must be treated as coming within the ambit of the definition since he is in truth a person who is or would but for this Act he entitled to possession of the dwelling house. In regard to the reason for this further definition it was pointed out that, the earlier definition of " Landlord " as including also a person who derives title from his landlord, would not catch up certain persons intended to be caught up in the special relationship created by the Rent Acts and this further definition had to be made. For instance, a landlord would not be caught up in relation to his subtenant, but for this further definition, as he does not derive title from his tenant. But the need for some restriction to be placed on the words was emphasised by Evershed, M.R. He said " But it seems, at any rate to me, that there must be some limitation put on the words. To take the most extreme case, you could not apply them where the occupant is a squattor having

no rights or title, or alleging that he is the tenant of some one else who equally has no right or title.....It would appear therefore more than possible that this addition to the definition in para (g) was put in (and I think something would have had to be put in) to make the word 'landlord' where a statutory tenancy has been created apply in the relationship being then dealt with by the Act between the person who would be entitled to possession apart from the Act and the statutory tenant. I therefore have come to the conclusion that this definition is not sufficient to give to the mortgagees in this case the right to describe themselves as the 'landlord' for the purpose of this Act." (717 and 718).

I am therefore of the view that the 1st to 6th plaintiffs are not the landlords of the defendant. Nor have they derived title from Mary Fernando and are not her successers in title. They cannot also, by virtue of the definition of the term 'landlord' in section 27 or by virtue of any other provision in the Rent Act, be deemed to be the defendant's landlord, To adopt any other construction would be to make a person who enters into possession of rent controlled premises as a contractual tenant a statutory tenant for all time and against all the world regardless of who the true owner is or how he became entitled to the premises.

They are therefore not barred from maintaining this action for declaration of title to the premises in suit, the ejectment of the defendant and for damages. I accordingly set aside the judgment and decree of the District Judge and enter judgment for the plaintiffs as prayed for with costs but with damages at Rs. 97.20 per month which it was agreed at the trial is the present authorised rent from 1.5.1968 till the plaintiffs are placed in vacant and peaceful possession of the premises.

GUNASEKERA, J.—

The Plaintiffs-Appellants having succeeded to the title to the premises No. 165, Galle Road, Kollupitiya, as fidei commissaries on the death of the fiduciary on 23.4.1968 filed this action on 30.6.1968 for a declaration of title and ejectment of the Defendant who was admittedly the lawful tenant of these premises under the fiduciary. They claimed that the original contract of tenancy with the fiduciary had come to an end with the extinction of the fiduciary rights and that the Defendant had therefore become a trespasser and should be ejected. The Defendant claimed the protection of the Rent Restriction Act and asked for a dismissal of the action.

At the trial it was admitted by the Defendant that in terms of the fidei commissum contained in a Last-Will of 1922 the title of the original owner, Anthony Fernando, to these premises devolved on her daughter Mary Fernando as fiduciary, and that on her death on 23.4.1968 that title came to 1st to 4th Plaintiffs the children of Mary Fernando and the Fifth and Sixth plaintiffs the children of another deceased child, as fidei commissaries. It was also admitted that the Defendant was the lawful tenant of the premises under Mary Fernando and that the premises were governed by the Rent Restriction Act No. 29 of 1948 (Chap 274) and its amendments then in force, and that the authorised rent of the premises was Rs. 97/20. It was further admitted that by a letter marked, D1, dated 18.6.1968 the Plaintiffs' Proctor wrote to the Defendant that the Plaintiffs had become the owners of the premises as fidei commissaries and that they were claiming vacant possession of the premises and that by letter marked D2 dated 30.6.1968 the Proctor for the Defendant replied thus:

> "Your client's mother the late Mrs. Mary Fernando was my client's Landlord to whom she paid all rents up to the end of March, 1968.
>
> Information was received by my client that your client's mother had died and my client thereafter contacted one of her daughters, namely, Mrs. L. H. D. de Silva who informed my client that she would let her know to whom the rents should be forwarded as from 1.4.68. On my client not receiving any intimation from Mrs. L. H. de Silva, I wrote to her on 7th June, 1968 requesting her to inform my client as to whom the rents should be paid. Up to date I have not received any reply.
>
> My client states that she will continue to occupy the above premises as tenant and pay your clients the rents as from 1.4.68. My client is unable to vacate the said premises.
>
> I forward herewith 5 Money Orders for Rs. 38/88 each all aggregating to Rs. 194/40. This represents rents for the months of April and May, 1968. The rent for each month is payable on or before the 10th day of the following month and my client will accordingly remit the rent for June, 1968 on or before the 10th day of July, 1968."

The Money Orders were returned by the Plaintiffs' Proctor to the Defendant's Proctor by letter D3 on 19.7.68 and thereafter the Defendant has deposited all rents due on the premises with the Rent Department of the Colombo Municipality, in terms of Section 12 of the Rent Restriction Act as amended by Acts No. 10 of 1961 and No. 2 of 1964.

On these admitted facts counsel for the Plaintiff relying on the Roman Dutch Law as summarised in the case of *Fernando v. De Silva* (1966) 69 NLR at 165 contended that the Defendant had become a trespasser but the learned District Judge dismissed the Plaintiff's action saying:

> "There is no doubt that the common law rule is that referred to by Counsel for the Plaintiff. The question for decision therefore, is whether the Rent Act had enlarged the rights of the tenant, which rights he did not possess at common law. I think it has. The fact that no statutory provision has been made for the continuation of the tenancy after the death of the landlord (whereas provision has been made in a case of death of a tenant) coupled with the definition of "landlord" in section 27, are, in my view, sufficient to create that new relationship between the defendant and the plaintiffs. I therefore hold that the defendant continues to be a tenant of these premises, and is protected by the Rent Act."

In appeal too Counsel for the Appellants relied on this same authority and he also referred us to the case of *Abeysinghe v. Perera et el* (1915) 18 NLR 222 and *Sithy Naima v. Gany Bawa* (1930) 32 NLR 155 dealing with long leases granted by fiduciaries. He submitted that as there was no provision in the Rent Restriction Act dealing with the death of the landlord similar to Section 18 dealing with the death of the tenant, the common law as stated in these cases must apply and the Defendant must be ejected from the premises. He also submitted that Section 13 of the Rent Restriction Act would not protect the Defendant in this case because the tenancy had lapsed on account of the total extinction of the landlord and Section 13 presupposes an existing landlord and an existing tenant, as indicated by the words "landlord" and "tenant' in that Section and the word "rent" in Section 27. But this last argument was considered and finally disposed of and the meaning to be given to these words in this context was definitely resolved almost thirty years ago in *Gunaratne v. Thelenis* (1946) 47 NLR 435 (DB) and further fully explained by Gratiaen, J. in *Britto v. Heenatigala* (1956) 57 NLR at 329; and it follows therefore that if the premises are rent controlled Section 13 must apply and govern the occupancy of such premises.

As far as the common law is concerned undoubtedly the tenant's rights to remain in occupation of the premises depended absolutely on the existence of a contractual tenancy; and in this instance, also it was rightly contended that the Plaintiffs did not derive their present title from the Defendant's landlord. But as these premises are covered by the Rent

Restriction Act the question whether in the common law a monthly tenancy granted by the fiduciary, who in law had dominium over the property and which dominium could, if there is a failure of fidei commissaries, even enlarge to full ownership, ceases with the death of the fiduciary, as in the case of the Usufructuary referred to by Pothier, is only of academic interest; and therefore, in this case, I will assume that as contended before us and as conceded by the Defendant and as held by the learned District Judge the Defendant's contractual tenancy ceased on 23.4.1968. I also accept that as admitted at the trial, the Defendant was the lawful tenant of the premises under the fiduciary because having dominium over the property the fiduciary could grant a valid tenancy.

However, the very purpose and clear intention of the Rent Restriction Act is to secure to a person continuity of occupation of any premises, which he has entered on a valid contract of tenancy, so long as he fulfils his statutory obligations and inspite of the termination of that contractual tenancy and the absence of any such thereafter. In terms of the Act and the many decisions of this court (*Gunaratne v. Thelenis* (supra) has been consistently followed in many cases thereafter), therefore on 23.4.1968, when the contractual tenancy ceased to exist instantaneously a "Statutory Tenancy" was created by law and the Defendant, as the erstwhile "tenant of the premises" became a "Statutory Tenant". She passed from the Roman Dutch Law position of a contractual tenant to the statutory status of a protected occupier and thereafter she could pay the "authorised rent" to the statutory authority in terms of Section 12, and that was deemed to be immediate payment to the Plaintiffs-Appellants who had become "the person for the time being entitled to receive the rent of the premises" (Section 27) and this entitled the Defendant to the protection ensured in Section 13 of the Act, which has to prevail "notwithstanding anything in any other law".

This statutory tenancy came into being because of the extinction of the contractual "landlord" and consequently for its continued existence it does not require another such "landlord"; it only needs a person "entitled to receive the rent of the premises". The statutory status conferred by the Act on the tenant is thus independent of the operation of the common law and the protection granted by Section 13 is inspite of it, and therefore, it matters nothing to the tenant's right to remain in occupation, whether the person to whom he will pay the rent became entitled to it through his previous landlord or independently of him as a fidei commissary or even on a new title on a decree under the Partition Ordinance

as was decided in the cases *Britto v. Heenatigala* and the Divisional Bench case of *Ranasinghe v. Marikar* (1970) 73 N.L.R. at 368-369. In the first case Gratiaen, J., dealing with the argument that the purchaser at a Partition Sale had acquired a new title independent of the tenant's previous landlord said:

> "I have come to the conclusion that the propositions of law relied on in support of the plaintiff's cause of action must be rejected. The decree for sale entered under Section 4 of the Ordinance certainly had the effect of bringing to an end the contractual relationship which previously existed between the defendant as tenant and the co-owners (taken collectively) as "landlord". Nevertheless, the statutory protection conferred on the defendant by section 13 of the Act was not extinguished either by the decree for sale dated 6th July, 1950 or by the certificate of sale dated 5th February, 1952. The plaintiff is therefore precluded from claiming the ejectment of the defendant without the authorisation of the Rent Control Board because he has not established that the defendant's protection under the Act has come to an end for one or other of the reasons set out in the proviso to section 13".

It is true that thereafter Gratiaen, J. did say:

> "At the same time I agree entirely with Sir Lalitha Rajapakse that it would be quite wrong to include within the definition of a "landlord" any person other than the original lessor or someone who derives his title from the original lessor. If, therefore, the true owner of the leased premises vindicates his title against the tenant's contractual lessor, the statutory protection which the tenant enjoyed against the lessor would not be available against the true owner",

and that he did distinguish the case before him by saying that, it was a case of a sale under the Partition Ordinance and that, "it is the title of the persons declared to be co-owners which is put up for sale". But with all respect, this fact did not matter at all in this regard because Section 9 of the Partition Ordinance gave to the purchaser a new title independent of the title of the co-owners and Gratiaen, J. himself had immediately thereafter to say :

> "It is quite correct to say that the decree for sale under Section 4 of the Partition Ordinance had the effect of wiping out the contractual rights of lessors and monthly tenants. *Samaraweera v. Cunjimoosa.* Under the common law, therefor, the defendant could not have resisted the claim for her ejectment. But it is at this stage that the Act intervenes to give her protection. Although the common law relationship of landlord and tenant between the co-owners and herself

was extinguished, a statutory relationship was created in its place which prevented them from ejecting her except upon one or other of the conditions permitted in Section 13".

Also, Fernando, C.J. in the latter case quite correctly stated,

> "It seems to me now that even if the right of a tenant protected by the Rent Restriction Act is not specified in a decree for *partition* or *sale*, that right can continue to exist because of the overriding effect of the statutory provision which confers that right".

Nor are we here concerned with the rights of a "true owner vindicating title" against a tenant and his landlord, because in this case the Respondent admittedly entered the premises under a valid contract of tenancy from the then lawful owner of the premises and so became the "tenant of the premises" protected thereafter for all time from ejectment except in terms of Section 13 of the Rent Restriction Act.

Whilst this Section or the Act itself certainly does not abrogate the common law of fidei commissary succession or the common law with regard to the creation or cessation of a contractual Tenancy, it unambiguously abrogates the common law right of a landlord and his successors in title as well as the common law right of all other persons who succeed to the ownership of the premises by "any other law" to sue to eject the "tenant of the premises" except as permitted therein.

For these reasons I hold that the Plaintiffs' action for a declaration of title and ejectment against the Defendant is misconceived and I affirm the Judgment and Decree of the learned District Judge and dismiss this appeal with costs.

Appeal allowed.