

1964      *Present* : Basnayake, C.J., Abeyesundere, J., and Sirimane, J.

H. EBHRAMJEE, Appellant, *and* T. PARAMANAND, Respondent

*S. C. 144/61—C. R. Colombo, 76,407*

*Landlord and tenant—Action for recovery of rent alone—Maintainability.*

A landlord is not precluded from suing for arrears of rent alone either before giving notice of termination of tenancy or after giving such notice but before it takes effect.

**A**PPEAL from a judgment of the Court of Requests, Colombo. This appeal was referred to a Bench of three Judges in terms of section 48A of the Courts Ordinance.

*S. Sharvananda*, with *Bala Nadarajah*, for Plaintiff-Appellant.

No appearance for Defendant-Respondent.

<sup>1</sup> (1936) 37 N. L. R. 345 at 347.

June 3, 1964. BASNAYAKE, C.J.—

This appeal comes before this Bench on an order made by me under section 48A of the Courts Ordinance on a reference made under section 48 of that Ordinance by my brother H. N. G. Fernando. The question for decision is whether a landlord who sues the tenant only for the recovery of arrears of rent can afterwards bring an action in ejectment in respect of the same breach of contract.

Briefly the facts are as follows :—The defendant who is the plaintiff's tenant failed to pay the rent due for May 1958 and subsequent months and the plaintiff on 16th March 1960 gave the defendant notice of termination of his tenancy and called upon him to deliver possession of the premises on 30th April 1960. On the 29th of April 1960, however, i.e., before the date on which the tenancy was to determine, the plaintiff filed an action in the District Court of Colombo (No. 49890/M) for the recovery of a sum of Rs. 1,380, being rent for May 1958 to March 1960. That action was settled and a consent decree for the payment of the arrears of rent due in instalments was entered on 21st February 1961.

While that action was pending the plaintiff on 24th May 1960 filed the present action for ejectment and damages as the defendant failed to vacate the premises on 30th April.

In view of that action in the District Court the learned Commissioner has held that the present action for ejectment and damages is not maintainable. In our opinion he is wrong.

Justice Pulle has in the case of *Ebhramjee v. Simon Singho* (62 N. L. R. 261) held that a landlord who sues his tenant for arrears of rent without at the same time asking for ejectment should not be allowed to pursue the claim for ejectment in separate proceedings. As indicated in our judgment in S. C. 65/61—C. R. Colombo 76,475<sup>1</sup> delivered today, we are unable to agree with that decision. It is upon termination of the tenancy by a valid notice and failure of the tenant to yield and deliver possession of the premises which is the subject-matter of the tenancy that the landlord may institute proceedings in ejectment and damages for over-holding while he may without terminating the tenancy sue for arrears of rent. In an action for arrears of rent he is not entitled to ask for an order in ejectment unless the tenancy has been terminated by a valid notice which has taken effect before the institution of the action for arrears of rent. Although it is the practice of landlords to institute an action for arrears of rent after the notice terminating the tenancy has taken effect and ask for ejectment and damages for over-holding, a landlord is not precluded from suing for arrears of rent alone either before giving notice of termination of tenancy or after giving such notice but before it takes effect. In the instant case the landlord was not entitled to ask for ejectment in the earlier action.

We accordingly set aside the judgment of the learned Commissioner and allow the appeal with costs both here and below.

ABEYESUNDERE, J.—I agree.

SIRIMANE, J.—I agree.

*Appeal allowed.*

<sup>1</sup> (1964) 66 N. L. R. 289.