IMBULDENIYA

v.

D. DE SILVA

SUPREME COURT.
SHARVANANDA, C.J., WANASUNDERA, J., ATUKORALE, J., L. H. DE ALWIS, J. AND SENEVIRATNE, J.
S.C. No. 62/85.
C.A. No. 351/76 (F).
D.C. KANDY 10767.
NOVEMBER 24, 25 AND 26, 1986.

Landlord and Tenant–Contract of letting–Landlord letting premises without owner's authority and not as his agent–Vindicatory suit–Is the entity of protection of the Rent Act the premises or the contract of tenancy?–Rent Act No. 7 of 1972, s. 22 (2) and s. 48.

A contract of letting is a contract whereby one party agrees to give another the use of a thing and the other party agrees to pay him a price (rent) in return. In order to grant a valid and effective tenancy a landlord must have sufficient legal title in the property to give to the tenant the right agreed upon. A person without any title to a particular piece of property may grant a tenancy thereof to another person. Such a tenancy is valid between the landlord and tenant but is not binding on the true owner.

Where the father of the plaintiff let out the premises to the defendant for his own benefit at a time when the plaintiff was not aware she was the owner and without her authority and not as her agent and the plaintiff neither acquiesced in nor adopted the letting, the defendant cannot claim the protection of s. 22 (2) of the Rent Act against the plaintiff.

It would be quite wrong to include within the definition of "landlord" any person other than the original lessor or someone who derives the title from the original lessor. The term "landlord" is defined as the person for the time being entitled to receive the rent under the contract of tenancy (s. 48 of the Rent Act). Such person need not necessarily be the true owner.

Per Sharvananda, C.J.

"The Rent Act does not give any protection to a tenant against a person who is not his landlord."

Per Seneviratne, J.

"'The entity of protection' granted by the provisions of the Rent Act is the 'contract of tenancy' and not the premises."

Cases referred to:

(1) *Glatthaar v. Hussan–1912 T.P.D. 127.*

(2) *De Alwis v. Perera–(1951) 52 NLR 433, 444.*

(3) *Britto v. Heenatigala–(1956) 57 NLR 327.*

(4) *Jayatunga v. Rosalinahamy–(1975) 78 NLR 213, 214, 215.*

(5) *Ranasinghe v. Marikkar–(1970) 73 NLR 361.*

(6) *Sathir v. Najeare–(1978) 79 (2) NLR 126, 134.*

(7) *Annamalai Chettiar v. Greasy–(1955) 56 NLR 477.*

(8) *David Silva v. Madanayake–(1967) 69 NLR 396.*

(9) *Wahabdeen v. Abdul Cadar–(1975) 79 (2) NLR 462.*

(13) *Alles v. Krishnan–(1952) 54 NLR 154.*

(14) *Visvalingam v. Gajaweera–(1954) 56 NLR 111.*

(10) *Lloyd v. Cook–(1928) 139 L.T. 452, 457; [1929] 1 KB 140.*

(15) *Fernando v. De Silva–(1966) 69 NLR 164.*

(11) *Rudler v. Franks–[1947] KB 530.*

(12) *Clark v. Downes–145 L.T. 20.*

(16) *De Silva v. Siriwardene–(1946) 47 NLR 487.*

(17) *Hull, Blyth & Co. v. Valiappa Chettiar–(1937) 39 NLR 97.*

(18) *Chow v. De Alwis–(1946) 47 NLR 43.*

APPEAL from judgment of the Court of Appeal.

K. Kanag–Iswaran with *S. Mahenthiran for appellant.*

H. L. de Silva, P.C. with *Nimal Senanayake, P.C., Miss S. M. Senaratne, Saliya Mathew, Miss S. N. Adithiya de Silva, Miss Shanika Rodrigo* and *Chanaka de Silva* for respondent.

Cur. adv. vult.

January 29, 1987.

SHARVANANDA, C. J.

The plaintiff–respondent instituted this rei vindicatio action on 14.3.1975, against the defendant, praying for:

(*a*) a declaration that she is the lawful owner of and entitled to possession of the premises in suit, and

(*b*) for ejectment of the defendant from the said premises and for damages.

The plaintiff averred that she became the owner of the premises on Deed of Gift No. 457 dated 17.11.1962 and that the defendant had entered into wrongful possession of the premises from or about February 1968. The defendant in her answer pleaded that she had become a tenant of the premises in suit from 1.2.68 under one A. J. W. Gunawardena and that she had paid all rents up to the end of February 1975 to her landlord and that she continued to be in

occupation of the premises as a tenant. The defendant further stated that since her landlord the said A. J. W. Gunawardena had died on 8.9.75, she was willing to continue to be in occupation of the premises as a tenant thereof. The defendant further stated as a matter of law that as the premises in suit are rent-controlled premises, subject to the provisions of the Rent Act No. 7 of 1972, the plaintiff cannot have and maintain this action.

After trial the trial judge dismissed the plaintiff's action with costs, on the ground that:

> "As the defendant is the tenant of the premises, the plaintiff is not entitled to the reliefs prayed for in the prayer of the plaint."

The plaintiff preferred an appeal to the Court of Appeal and that Court by its judgment dated 2.8.1985 set aside the judgment of the District Court and entered judgment for the plaintiff as prayed for with costs. The defendant has now preferred this appeal to this Court.

This appeal was heard by a Bench of five judges on a direction given under Article 132(3) of the Constitution.

At the trial it was admitted by the plaintiff that the defendant entered into occupation of the premises on 1.2.1968 as a tenant, and that the premises in suit are premises governed by the provisions of the Rent Act.

It is not disputed that the plaintiff is the owner of the premises in suit, having become so entitled to same by virtue of Deed of Gift No. 457 of 1.9.1962 from her father, A. J. W. Gunawardena, that the said A. J. W. Gunawardena (plaintiff's father) after having so gifted the property to the plaintiff, let out the premises to the defendant in February 1968 and collected and appropriated the rent to himself. He had so let without any authority from the plaintiff and for his own benefit. The premises are residential premises.

From the evidence led in the case it would appear that the plaintiff and her husband were under the impression and belief that the donor, A. J. W. Gunawardena, had reserved to himself life interest in the premises in suit. The plaintiff had not seen the Deed of Gift and had accepted her father's assertion that the gift was subject to his life interest and that he could lawfully let out the premises for his own benefit. Labouring under this belief the plaintiff and her husband did

not dispute the right of Gunawardena to let the premises to the defendant. The plaintiff's father had reported to the Tax Department, that he had gifted the house to the plaintiff subject to his life interest for himself and his wife. The Income Tax Department had so informed the plaintiff. The reasonableness and genuineness of the belief of the plaintiff consequent to her father's representations to her that he was entitled to life interest of the premises is not questioned. It was only in July 1974, that the plaintiff became aware that her ownership of the premises was absolute and not subject to any life interest in favour of her parents, after she had got a copy of letter dated 20th July 1974 (P8) sent by Gunawardena to the defendant. By this letter Gunawardena requested the defendant to remit the house rent in future to the plaintiff, as she was the owner of the premises. This was the first intimation that both plaintiff and defendant had that the plaintiff was the absolute owner of the premises.

From the above facts, the following conclusions emerge: that the plaintiff's father Gunawardena was the landlord of the defendant and that he rented out the premises to the defendant in 1968 when he had no authority from the plaintiff to do so, as he had by Deed of Gift P1 in 1962 made an absolute Gift of the premises to the plaintiff and the plaintiff had become the absolute owner thereof, when Gunawardena rented the premises to the defendant he was not acting as the agent of the plaintiff, he had no right or authority to rent out the premises to the defendant; the plaintiff never acquiesced in or adopted the letting by her father to the defendant.

The question that comes up for decision in this case is whether the defendant, the tenant of the premises under Gunawardena, could claim the protection of the Rent Act, as against the plaintiff, who though, at all relevant times was truly the owner of the premises in suit, had not authorised the letting.

The principal argument of counsel for the defendant was that section 22(2) of the Rent Act 1972 applied to the relationship of landlord and tenant and that the statutory protection enjoyed by the tenant against his landlord would be available against the true owner also. He submitted that the defendant had acquired the status of "tenant" and that "the entity of protection" granted by the provisions of the Rent Act is the "premises" and not the contract of tenancy. He contended that even though the plaintiff was the owner of the premises, the defendant could not be ejected from the premises in suit

except by her landlord and that in any event a decree for ejectment could be founded only on the grounds specified in section 22(2) of the Rent Act; that as the action for ejectment had not been based on any one of those grounds, the plaintiff cannot have and maintain this action. He stressed that section 22(2) commenced with the non obstante clause "notwithstanding anything in any other law" and that landlord has been defined to mean "the person for the time being entitled to receive the rent of such premises." He argued vehemently that the Rent Act applies to the house and not to persons and that this provision of the Act operates in rent and not in personam. He contended that the Rent Act operates on property.

The main object of the Rent Act was to give a tenant security of tenure by preventing his landlord from evicting him without a decree of court. The Act enjoins the court not to make order for possession except on the grounds specified in section 22 and other relevant sections. The Rent Act confers upon the tenant protection from being evicted by his landlord except on certain specified grounds. It thereby imposes restriction, upon the landlord's right to possession of the premises after the contractual tenancy had come to an end. The burden rests on the landlord to establish the existence of one of the specified grounds for obtaining possession.

A contract of letting is a contract whereby one party agrees to give another the use of a thing and the other party agrees to pay him a price in return. The price to be paid is known as rent. The parties to a tenancy acquire contractual rights against and become subject to corresponding duties in favour of each other. In order to grant a valid and effective tenancy, a landlord must have sufficient legal title in the property to give to the tenant the right agreed upon. A person without any title to a particular piece of property may grant a tenancy thereof to another person. Such a tenancy is valid between the landlord and tenant but is not binding on the true owner. It is not a valid letting and is ineffectual against him. The absolute owner of property always has sufficient title to grant a lease or tenancy of such property. So is a person who has real rights in property less than ownership, that is a jus in re aliena but which comprises the use and occupation of the property. Such a person has sufficient title to grant a lease or tenancy of the property which will be effective for the period of his own right and not beyond it. Thus a usufructuary may validly lease or let a

property in which he has the usufruct but only for the period of his own right, and any portion of lease beyond such period is not binding on the owner of the property.

It is well settled law that a person may let to another, property without having any right or title in it, and without any authority from the true owner. Such a letting is valid as between the landlord and the tenant. However the owner of the property is not bound by the letting of such property which is made without his authority or consent or subsequent ratification.

Wessels, J., in *Glatthaar v. Hussan* (1) said–

> "It is true that I may lease to you another's land and if I do so you cannot question my title nor can I deny to you the right to holding the land against me, but this in no way prejudices the right of the true owner."

The true owner is entitled to have the letting declared null and void and to an order evicting the person in occupation who claims to be the tenant. But between the parties to the letting, the lease is binding, and they acquire the rights and become subject to obligations of landlord and tenant respectively.

According to the common law as enunciated above, the tenancy which Gunawardena granted to the defendant will not bind the plaintiff who at all relevant times was the true owner of the premises; the plaintiff would be entitled to an order evicting the defendant who is a trespasser as against her.

But counsel for the defendant submitted that the Rent Act has fundamentally altered the situation and that it is not open to the plaintiff, who is the owner of the premises and in breach of whose rights of ownership, Gunawardena had granted the tenancy to the defendant, to repudiate the invalid letting. He submits that the plaintiff is, as a result of the operation of the Rent Act, not entitled to an order of ejectment even though she is not the "landlord" of the defendant in respect of the premises in suit. His argument predicates the position that once a person becomes a tenant of rent controlled premises, whether under the true owner or under a person who has no right to the property and who could not validly let, he could not be ejected except in terms of the provisions of the Rent Act. I cannot agree with this submission.

If counsel's proposition is accepted a sub-tenant cannot be ejected by the head-landlord as a sub-tenant of the premises is "tenant" of the premises under his landlord, viz., the tenant. Counsel had to admit that a sub-tenant can be ejected on a decree of ejectment against the tenant. The construction contended for, impinges on an established principle of the law of property. There is no indication in the Act that the legislature intended to overthrow fundamental principles of the common law. Clear language is necessary to alter the common law. A right of the owner of property to sue for ejectment of a trespasser can only be taken away by a definite and positive enactment. The defendant might have entered the premises in suit under Gunawardena, but she entered and is remaining in the premises as a trespasser vis-a-vis, the plaintiff.

In my opinion the provisions of the Rent Act apply only to those who are parties to the contract of tenancy and to those who derive title from them respectively.

The Rent Act controls the right of a landlord and not of the owner of rent-controlled premises to sue the tenant. The landlord would in terms of the contract, be the person who let the tenant in and thus became entitled to receive the rent of such premises (Vide section 48 of the Rent Act). I agree with Gratiaen, J., that it is not legitimate that a landlord must be defined as not only one who is entitled to receive his rent but as one who has jus in re in regard to the premises. Vide *De Alwis v. Perera.* (2) If the owner of the premises was not a party to the contract of tenancy by himself or on derivative title, he does not come within the definition of "landlord" in section 48 and hence is not entitled to receive the rent of the premises. Unless he was thus a party to the contract of tenancy the owner cannot be identified with the landlord. Section 22 of the Rent Act applies only when a landlord whether he is the owner of the premises or not, seeks to eject the tenant of the premises, and not when a owner qua owner seeks to eject a person who is a trespasser towards him but who claims to be the tenant under a third party who had no right to let the premises to him.

I gratefully adopt in this context the statement of the law by Gratiaen, J., that–

> "It would be quite wrong to include within the definition of 'landlord' any person other than the original lessor or someone who derives the 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 enjoys against the lessor would not be available against the true owner. *Britto v. Heenatigala.* (3)

In *Jayatunga v. Rosalinahamy* (4) Tennakoon, C.J., stated–

"It seems to me patent that section 13 (of the Rent Restriction Act, Cap. 274) is a limitation of the right of a landlord to institute or maintain an action against his 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 the person in occupation of the premises and claiming to be a tenant of some other person."

I agree with Tennakoon, C.J., that when the Rent Restriction Act defines the term "landlord" as the person for the time being entitled to receive 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 the particular tenancy of the premises in question, have been the person who let the premises.

In *Ranasinghe v. Marikkar* (5) a Divisional Bench of five judges held that where there is a valid letting of the entirety of the premises to which the Rent Restriction Act applies, a sale of the premises under the Partition Act does not extinguish the rights of the tenant as against the purchaser, but if rent controlled premises are owned by co-owners and one of them leased 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 the purchaser who buys the premises subsequently in terms of an interlocutory decree for sale entered under the Partition Act. In such a case a tenant cannot resist an application by the purchaser to be placed in possession of the premises. The ratio decidendi of this case militates against the submission of counsel that once a person becomes a tenant of rent controlled premises, he is protected against eviction not only by his landlord but by owners who become entitled to the premises not on a derivative title from his landlord, but on a title independent of that of the landlord.

In my view the availability of the protection of the Rent Act to the tenant in occupation against the 3rd party depends on the answer to the question whether the original letting was a valid one and whether the title of the plaintiff in the rei vindicatio action is derivative title from the tenant's landlord. If the plaintiff claims the premises against such landlord and that landlord had no right or title to let out the premises as against the owner, the tenant, cannot claim the benefit of the protection of the Rent Act. The Rent Act does not give any protection to a tenant against a person who is not his landlord. *Sathir v. Najeare* (6).

Counsel for the defendant-appellant relied heavily on the dissenting judgment of Gunasekera, J., in *Jayatunga v. Rosalinahamy (supra)* (4) as supporting him. In that case the facts were as follows: AF was the original owner of the premises in suit. By his Last Will he bequeathed the premises to his daughter MF subject to a fidei commissum in favour of the children of KF. MF died on 23.4.1968 and her children, the 1–6 plaintiffs became owners of the premises as fidei commissary successors. The defendant originally came into the occupation of the premises as a monthly tenant under MF. On 30.6.1968, the plaintiffs filed action for a declaration of title and for ejectment of the defendant, on the basis that the contract of tenancy with MF, the fiduciary, came to an end with the extinction of the fiduciary's right, and that the defendant had therefore become a trespasser. The premises were admittedly governed by the Rent Restriction Act, No. 29 of 1948. The defendant claimed the protection of the said Act and prayed for a dismissal of the action. It was held by Tennakoon, C.J., and Vythialingam, J., (majority) that the plaintiffs were not barred from maintaining the action inasmuch as they did fall within the meaning of the term "Landlord", as defined in the Rent Restriction Act. They held that the said Act can have no application to one who was neither the original common law landlord nor the successor in title. Gunasekera, J., dissenting from the majority held:

> "In this case the respondent (defendant) 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 times from ejectment except in terms of section 13 of the Rent Restriction Act."

But it is to be noted that Gunasekera, J., premised his enunciation of the law by stating:

> "We are not here concerned with the rights of "true owner" vindicating title against the tenant and his landlord, because in this case the defendant admittedly entered the premises under a valid contract of tenancy from the then lawful owner of the premises."

Nothing said by Gunasekera, J., militates against the position that if the defendant-tenant did not enter the premises under a valid contract of tenancy from the then lawful owner of the premises he would not be entitled to the protection of the Rent Act from being evicted by the owner.

Counsel for the defendant-appellant referred to the conflicting judgments of the Supreme Court, where the issue involved was–

> "Where the original letting was by a fiduciary or usufructuary and hence was valid letting, could the plaintiff claim to be a tenant entitled to the benefit of the Rent Restriction Act in respect of rent controlled premises as against the new owner on the extinction of the fiduciary or usufructuary rights?"

It is not necessary to go into this disputed question as the present case can be distinguished from all those cases on the basic premise that the original letting here was not a valid letting. Gunawardena had no right or title to let the premises in suit to the defendant and hence his letting was an invalid letting; there was no valid contract of tenancy binding the plaintiff who was the lawful owner of the premises at the relevant times. In 1968 when the tenancy commenced both Gunawardena and the defendant were trespassers as against the plaintiff. Since the plaintiff had not become owner after a lawful letting, Gunasekera, J's dissenting judgment does not help the defendant.

Counsel referred us to *Annamalai Chettiar v. Greasy* (7) where it was held that when a person purchases from a landlord rented-premises to which the Rent Restriction Act applies, he becomes the tenant's landlord by virtue of the definition of the term in section 27 of the Act. It is to be noted here that the purchaser derives his title from the "landlord", who was entitled in law to let out the premises. This does not touch the question where the original landlord could not have validly let the premises. Counsel referred to *David Silva v. Madanayake* (8) and to *Wahabdeen v. Abdul Cader* (9) in support of

his proposition that when the landlord donates or sells the premises which have been rented out by him the tenant has the election to continue to be the tenant of the premises and the status of statutory landlord is transferred to the purchaser or the donee or vendor. Here again there was no question of the validity of the original letting by the vendor or donor. Since the plaintiff in both these cases had only derivative title, derived from the original landlord, who was the lawful person to let out the premises, the purchaser or the donee was bound by the tenancy entered into by his predecessor in title.

In view of the above holding I cannot agree with the contention of counsel for the defendant-appellant that the "entity of the protection granted by the Rent Act, No. 7 of 1972 is premises in suit and not the contract of tenancy." The Rent Act affords statutory protection in respect of rent controlled premises to a tenant who has entered the premises on a valid contract of tenancy. The Rent Restriction Act does not apply where the true owner sues the defendant as trespasser and not as a tenant.

I dismiss the defendant's appeal and affirm the judgment of the Court of Appeal. I enter judgment for the plaintiff with costs in all the courts. (Damages to be calculated at Rs. 236/59 per month as from 30.12.74, as agreed.)

WANASUNDERA, J.—I agree.

ATUKORALE, J.—I agree.

L. H. DE ALWIS, J.—I agree.

SENEVIRATNE, J.

I agree with the judgment of My Lord the Chief Justice, who has dismissed the appeal of the defendant-petitioner, and ordered the ejectment of the defendant-petitioner, who is a trespasser in the premises in relation to the plaintiff-respondent. I am adding my judgment to express my views regarding the two points referred to this Divisional Bench by My Lord the Chief Justice. The earlier Bench after hearing the learned counsel for the defendant-petitioner for four days has referred the two matters to His Lordship the Chief Justice as matters fit to be considered by a fuller Bench of this Court. It is on this reference that My Lord the Chief Justice has constituted this Divisional Bench to hear this appeal. I will later set out the two matters referred to for consideration.

The two matters referred to this court have arisen from the following grounds of appeal urged in the Petition of Appeal filed–

(1) Paragraphs 14 (*a*) – (*d*), under the heading "true owner" as follows:–

(*a*) that the rights of the true owner under the common law had been pro tanto abrogated or overridden by the provisions of the Rent Act and by reason of the protection afforded to a tenant of the premises affected by the Rent Act operating in rem upon it and the status created by such operations as set out in paragraph 13 above.

(*b*) that though under the common law when the true owner vindicated title against the contractual Lesser (landlord) the contractual Lessee (tenant) had no protection, nevertheless by reason of the effect of the provisions of the Rent Act, as aforesaid, the tenant, was protected from ejectment, but without impediment however to the true owner seeking a declaration of title only (and not ejectment).

(*c*) that because the Rent Act, limited the right to eject or dispossess such tenant only to the class of persons referred to in the Act and on grounds set out therein, a true owner was, since the coming into operation of the Rent Act not in a position to eject such a tenant unless he brought himself under the class of persons who were given that right, whether by contract, attornment or operation of law.

(*d*) that it was settled law that a person who is not the owner of property may let it and such letting would be a valid letting. Reliance was placed on *De Alwis v. Perera* (*supra*) (2).

(2) Paragraphs 13 (*a*)–(*e*) under the heading "operation of the Rent Act" as follows:–

(*a*) that it applied to "premises" by its express provisions. Reference was made to Section 2(1) and (4) among several others.

(*b*) that the fundamental object of the Act was to protect a tenant from being turned out of his home.

(c) that this was achieved by applying the protection under the Act to the premises, whether residential or business.

(d) and by conferring a status upon such protection which status affected the premises and operated in rem upon it. By status was meant the legal position afforded to the premises by the protection granted under the Rent Act. Reliance was placed on *Lloyd v. Cook* (10), *Rudler v. Franks* (11) and *Clark v. Downes* (12) cases decided under comparable English Rent Control legislation,

(e) that the Rent Act made such protection inviolate by all except by those persons referred to in Section 22 and that too only upon the satisfaction of the conditions contained therein. The opening words of their Section being "notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises". As to the meaning and legal import of this non-obstante clause, Birendra, Interpretation of Statutes (7th Ed.) was cited at pages 1092 and 1093.

The earlier Bench has referred the following matters to My Lord the Chief Justice as fit for consideration by a fuller Bench:

"While this matter was being argued, it became clear that, amongst the several questions arising for consideration are:–

(1) The question as to the scope and the content of the words 'person for the time being entitled to receive the rent', contained in the definition of the word 'landlord' in section 48 of the Rent Act, No. 7 of 1972; and

(2) Whether 'the entity of protection' granted by the provisions of the Rent Act is 'the premises' or 'the contract of tenancy'.

Both counsel have now moved that this is a fit matter for consideration by a Full Bench of this Court. It seems to us too that, having regard to the judgments referred to above, these questions may be considered by a Full Bench of this Court."

This reference also sets out the decisions of this Court cited in the course of the argument. In this judgment I will briefly express my opinion regarding the two matters referred for the determination of this Court.

As regards the reference (No. 1) I must at the outset state that the matter is not strictly relevant to this case because the court has now held that there was no contract of letting and hiring between the defendant-petitioner and the plaintiff-respondent. After the death of the previous landlord of the defendant-petitioner A. J. W. Gunawardane (father of the plaintiff), there was no creation of a statutory status of landlord and tenant between the plaintiff-respondent and the defendant-petitioner respectively.

Reference (No. 1) is based on the Rent Act, No. 7 of 1972 on the definition of the term "landlord", in section 48 of the Rent Act, which is as follows:–

Section 48–In this Act unless the context otherwise requires–

"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 subtenant."

In this definition the word "means" is of significance as it determines the scope of the term "landlord". The word "means" is used in contradistinction to the word "includes" used in definitions. There are two forms of interpretation. In one, where the word defined is declared "means" so and so, the definition is explanatory and prima facie restrictive. In the other, where the word defined is declared to "include" so and so, the definition is extensive. Craies on Statute Law, (7th Ed.) 213. Generally in a contract of letting and hiring the party who lets the premises, the landlord is the owner and the tenant is the hirer. But under the Roman-Dutch Law–

"a person may let to another immovable property without having any right or title in it or any authority from the true owner. Such a lease is valid as between the landlord and the tenant, but it does not follow that it is binding on the owner of the property." Wille: Landlord and Tenant (4th Ed.) page 20.

The Roman-Dutch Law which is our law in relation to letting and hiring–landlord and tenant–is still our basic law. Due to the shortages of housing in urban areas which developed after the last World War (1939–45) the need arose for legislation pertaining to Housing to protect both the landlord and the tenant. The first Law pertaining to the subject was the Rent Restriction Ordinance No. 60 of 1942. The

Rent Law promulgated by various Rent Acts up to the Rent Act, No. 7 of 1972 with its subsequent amendments has not abrogated entirely the Roman-Dutch Law applicable to a contract of letting and hiring. The Rent Law is an edifice built on the foundation of the common law for the good of the public and social justice. The common law still prevails in areas not covered by the Rent Acts.

It will be seen that the term "landlord" as set out above has been defined – without any reference to ownership as such. The governing words are "means the person for the time being entitled to receive the rent of such premises". Section 16 of the Rent Restriction Ordinance No. 60 of 1942 has defined the term "landlord" as follows:

> "The person for the time being entitled to receive the rent of such premises".

The next Act, Rent Restriction Act, No. 29 of 1948 – Section 27 has defined the term "Landlord" in the same terms with a certain addition:

> "Means the person.....and includes any tenant who lets the premises or any part thereof to any subtenant."

It will be noted as cited above that the present Act, Rent Act, No. 7 of 1972 defines the term "Landlord" in the same manner. The effect of this additional provision in the Rent Act of 1929, and that of 1972 is to constitute the tenant of any premises as the landlord in relation to his subtenant.

The Supreme Court has held in the majority judgment in the leading case of *De Alwis v. Perera* (*supra*) (2) – that the landlord of the premises can be a person who is not the owner of the premises. This principle has been followed in the cases–*Alles v. Krishnan* (13) and *Visvalingam v. Gajaweera* (14). The father of the plaintiff-respondent, A. J. W. Gunawardane, who was the landlord of the defendant-petitioner till his death admittedly had no title to the premises in question. As such the learned counsel for the defendant-petitioner stressed the above principle that the landlord need not be the owner of the premises, and further developed his thesis that even after the death of the landlord the said Gunawardane, a statutory tenancy was vested in the defendant-petitioner, and she was entitled to continue to be the tenant and pay rent to whoever was entitled to receive the rent. As such any action for ejectment against

the defendant-petitioner must be founded on the provisions of section 22 of the Rent Act, No. 7 of 1972. In making this submission the learned counsel for the petitioner obviously overlooked the important fact that Gunawardane had gifted this premises to the defendant-petitioner in 1962, that the premises were let by Gunawardane to the defendant-petitioner only in 1968, after the plaintiff became the owner. As such, there was no person to whom the rights of Gunawardane as landlord could pass after his death, who could found an action under section 22 of the Rent Act. The learned counsel for the defendant-petitioner overlooked the fact that the defendant-petitioner the tenant had always been a trespasser in the premises in relation to the plaintiff-appellant. The Rent Act, No. 7 of 1972 has purposely provided for the continuance of tenancy upon the death of the tenant. This has been done because the common law does not provide for such a situation. The common law provides for the continuation of the rights of the landlord after his death, and legal heirs succeed to the landlord—*W. L. S. Fernando v. H. N. De. Silva* (15). The death of the landlord does not terminate the tenancy.

In addition to this the plaintiff-respondent has not called upon the defendant-petitioner to attorn to her as the tenant but has gone further and even refused to accept her as the tenant. All these common law principles pertaining to the status and rights of a landlord militate against the defendant-petitioner. I hold that to be a landlord in terms of section 48 of the Rent Act in respect of the premises there must be a privity of contract between the landlord and the tenant which would entitle the former to receive the rent. Such right as a landlord can devolve and pass, on the death of the landlord, by transfer of property by the landlord, sale of the property on Decree of Sale under the Partition Ordinance. (*Britto v. Heenatigala (supra)* (3)). There was no such privity of contract between the plaintiff-respondent and the defendant-petitioner, for the reason that:

(*a*) the plaintiff-respondent has become the owner of the property by deed of gift from the said Gunawardane long before the premises were rented to the defendant-petitioner in 1968,

(*b*) the contract of landlord and tenant between the deceased Gunawardane and the defendant-petitioner ceased after the latter's death,

(*c*) in any event there was no person to whom the landlordship right of Gunawardane could have passed on his death.

I will now deal with the second reference to this Court, i.e. whether "the entity of protection" granted by the provisions of the Rent Act is the "premises" or "the contract of tenancy". As shown earlier this reference is covered by paragraphs 13(*a*)–(*e*) of the Petition of Appeal which have been set out above. In the Petition of Appeal the learned counsel for the defendant-petitioner has stated that the proposition set out in the cited paragraphs "has never been considered by our courts", and ought to receive a fuller and fair examination. I suppose this proposition has never been considered because it is a startling proposition and does not seem to have been made earlier, i.e. that the Rent Act operates in rem in respect of the premises. The authorities cited in paragraph 13(*d*) of the Petition of Appeal are as such decided English cases. Before I deal with these cases in order to understand the background to these English decisions, it is necessary to discuss the history and the development of the law in England pertaining to Housing. Passing of Acts in England pertaining to Housing originated for the first time after the First World War of 1914–1918 in order to mitigate the hardship to tenants resulting from scarcity of housing and to prevent landlords increasing the rent of premises above a permitted maximum, and secondly to confer on the tenant a status of irremovability by the landlord except on court orders passed on certain grounds. Unlike in our country there have been swings in England in respect of the Rent Law in this manner, when the housing situation eased, there have been Acts to decontrol houses and again when that phase passed off Acts to control the houses. One of the earliest Rent Acts passed was the Rent and Mortgage Interest Restrictions Act 1920 and 1923. Such Acts continued to be passed till 1939. The above Acts were really intended to decontrol the houses that came under the Rent Acts. Again after the Second World War (1938–1945) Acts were passed to control the houses, and the decontrol of houses was stopped in 1939. The control of houses began with the Rent and Mortgage Interest Restrictions Act of 1939. Such acts were passed to control the houses from 1939–1957, and the Rent Act of 1957 was primarily an exercise of decontrolling houses of a certain rateable value.

The real Rent Act passed in U.K. in the manner of our Rent Act of 1948 and the present Act, was the Rent Act of 1968, which was meant to control tenancies and not to decontrol the dwelling houses as had the Rent and Mortgage Interest Acts, 1920–1931, which applied to dwelling houses and operated in rem. In 1977 in England

the Rent Act of 1968 and all connected legislation were repealed and consolidated by the Rent Act of 1977. This Act contains special provisions to give security to tenants.

The learned counsel relied on three English cases to support his submission that the Rent Act operated in rem in respect of premises. The cases relied on were–

(1) *Lloyd v. Cook (supra)* (10).

(2) *Rudler v. Franks (supra)* (11) and

(3) *Clark v. Downes (supra)* (12).

As I will show now, cases (1 and 3) above were cases that considered the Acts of 1920 and 1923 referred to above, which were operated to decontrol the houses brought under control during the World War of 1914–1918. The case of *Lloyd v. Cook (supra)* (10) (No. 1) above, was a case which dealt with the provisions of Rent and Mortgage Interest Restrictions Act of 1923. In this appeal five like appeals were consolidated, and the court considered the scope of the 1923 Act. Scrutton, J. –page 457, who delivered the judgment in respect of the five cases held as follows:

> "I look at the object and words of section 2(1) of the Rent and Mortgage Interest and Restrictions Act of 1923, to ascertain its true construction. I take its object to be at a time when restriction was supposed to be drawing to an end, owing to increase provision of houses gradually to decontrol houses in certain cases."

The term that the Act operated in rem has been used in the case cited *Clark v. Downes (supra)* (12) (No. 3) above. This was also an action under the Rent and Mortgage Interest and Restrictions Act of 1920 and 1923, i.e. this case dealt with the same two Acts considered in the case of *Lloyd v. Cook (supra)* (10) and the facts of *Lloyd's case (supra)* (10) are referred to in this case. In the course of the judgment Lord Hanworth, M.R. referred to the case of *Cook v. Lloyd (supra)* (10) and held as follows:

> "Turning now to the Restrictions Act cases have been cited to us which clearly indicate that their effect is in rem and not in personam. Greer, L.J. explicitly states this in the case of *Lloyd v. Cook (supra)* (10). The case of *Lloyd v. Cook (supra)* (10) did not use the two legal terms in rem or in personam, but made the same conclusion

that the 1923 Act applied to the premises. The ratio decidendi in both cases is that the 1920 and 1923 Acts referred to above operated in respect of the premises–in rem as it was meant to decontrol the premises, and did not apply in personam in respect of landlord or tenant, or in respect of the contract of tenancy. The case of *Rudler v. Franks (supra)* (11) (No. 2) above, is a judgment of Goddard, C.J. which deals with the lease of a farm, which was Crown property under the Small Tenements Recovery Act, 1838. The decision in this case cannot be construed without reference to the 1838 Act, which I have not been able to peruse, and further it is not that relevant as it dealt with Crown property. This case held that the Crown was not affected by the Rent Restriction Acts as they applied in rem and not in personam. This case approved the decision in *Clark v. Downes (supra)* (12) cited above."

The learned author and the authority Megarry in his book–The Rent Acts (10th Ed.) Vol. 1, page 22 deals with the proposition, i.e. now being considered by me–at page 22, section 7–The Acts Operate In Rem. Megarry states as follows:

1. "The Rule:–It has often been said of the Acts that they apply to houses, not persons, and that they operate in rem and not in personam .... the Rent Acts speaking generally operate in rem, i.e. they operate on property. (*Rudler v. Franks* above is cited). These expressions must not however be taken too widely and one view is that they are 'more confusing than helpful'. In any case the doctrine could operate only with qualified effect during periods while premises were liable to be taken outside the Acts by the tenant giving up possession, i.e. from 1923–1938 and from 1957 to 1965".

The dicta in the judgments cited, and this quotation from Megarry clearly shows that the thesis or the proposition that the Rent Acts operating in rem, i.e. operating on property has been one propounded in respect of the Enactments which dealt with mainly, the decontrol of houses. The propositon that the Rent Act of 1972 must be considered to operate in rem in respect of houses cannot be accepted as the English authorities cited in support of it do not support the proposition.

In my view to understand the meaning, the scope and operation of our Rent Law, i.e. the Rent Acts the safest course is to resort to the preamble of the first Rent Law passed in our country, i.e. the Rent

Restriction Ordinance No. 60 of 1942. In the principles pertaining to the Interpretation of Statutes, it has been accepted that the preamble of a statute can be considered to determine the meaning, the nature and scope of a statute. Determining the scope of the statute is determining the operation of the statute. "Preambles ..... have been regarded as of great importance as guides to construction. They were used to set out the facts or state of the law for which it was proposed to legislate by the statute". Lord Alverstone, C.J. said:

> "I quite recognise that the title of an Act is part of the Act and that it is of importance as showing the purview of the Act: and I may express in this connection my regret that the practice of inserting preambles in Acts of Parliament has been discontinued as they were often of great assistance to the courts in construing the Acts." Craies on Statute Law (7th Ed.) Page 199.

The first Rent Law in our country – the Rent Restriction Ordinance No. 60 of 1942 had this preamble–

> "An ordinance to restrict the increase of rent and to provide for matters incidental to such restriction".

The next Rent Law – The Rent Restriction Act No. 29 of 1948 had the preamble – an act to amend and consolidate the law relating to rent restriction. The present Act No. 7 of 1972 had the same preamble as the 1948 Act. Craies states:

> "That the object of the preamble is to set out the facts or state of the law for which it was proposed to legislate by statute". Page 199.

The main object of the 1942 Act as clearly stated was to restrict increase of rent. The preamble of the 1948 Act also deals with Rent Restriction, and the preamble of 1972 Act also emphasises – "Law relating to rent restriction". In the case of *De Silva v. Siriwardene* (16) Dias, J. has considered the preamble to the Rent Restriction Ordinance of 1942 in order to determine its scope and operation. Dias, J. held as follows:

> "The preamble to the Rent Restriction Ordinance says that it is an Ordinance to restrict the increase of rent and to provide for matters incidental to such restriction ..... The object of the Legislature, therefore, was to restrict the landlords who, by taking advantage of

the existing shortage of living accommodation, made inequitable demands for rents from tenants, who by force of necessity had to accede to such exorbitant demands". (Page 490).

In respect of other Enactments also the Supreme Court has considered the preamble to determine the scope of operation of such enactments–*Hull, Blyth & Co. v. Valiappa Chettiar* (19) and *Chew v. De Alwis* (18). The learned counsel for the defendant-petitioner to support his submissions referred to sections 2(1), 2(4) and other like sections of the Rent Act which refer to premises, but the Rent Act taken as a whole refers to the rights and duties of a landlord of a tenant and other incidental matters. There is no doubt that the rights and duties of a landlord, those of a tenant and the determination of the statutory rent have to be considered with reference to the premises, as the crux of the Rent Law is based on the premises. The entire consideration of the Rent Act shows that one cannot give undue prominence to the sections dealing with the premises, and say that the Rent Act operated in respect of the premises. The Rent Act as shown by the name itself deals with the Rent, and the main purpose of the Rent Act is to give relief to the non-house owners in respect of unconscionable increases of rent by rapacious landlords. All other matters are incidental to this main object of the Rent Act. I do not agree with the learned counsel for the defendant-petitioner that the Rent Act operates in rem, i.e. in respect of the premises. One can only say that among the other fields of operation the Rent Act also operates in respect of the premises within the provisions of the Rent Act. The learned counsel for the petitioner as I see it has vehemently propounded the proposition that the Rent Act operates in respect of premises as he is more than fully aware and realises that the defendant-petitioner has no status whatsoever as a tenant in respect of the premises. In relation to the plaintiff-respondent the defendant-petitioner is an interloper trespasser. I hold that "the entity of protection" granted by the provisions of the Rent Act is the "contract of tenancy" and not the premises.

I agree with my Lord the Chief Justice and dismiss the appeal.

Appeal dismissed.