1954 *Present :* **Sansoni J.**

A. C. SUPPIAH CHETTIYAR *et al.*, Appellants, *and*
S. M. D. B. SAMARAKOON, Respondent

S. C. 117-118—C. R. Kandy, 9,066

Rent Restriction Act—Business premises—" Reasonable requirement " of landlord—Factors for consideration.

Plaintiff was the landlord of the defendants in respect of certain premises. He sought to have them ejected on the ground that he required the premises for his trade and business. The evidence showed that the premises were already being used by the tenants since the year 1938 as the principal place of their chief business of selling sundry goods.

Held, that, when assessing whether the landlord reasonably required the premises, the Court should give due weight to the advantage to the tenant of continuing to occupy the same premises and to the proportionate disadvantage suffered by him by being forced to leave them. The value of a business such as selling sundry goods would depend to a large extent on the length of time that it had been carried on in the same premises.

Held further, that the fact that the plaintiff invested a large sum of money in the purchase of the premises in the expectation of getting vacant possession was not a measure of the reasonableness of his claim.

Quaere, whether it is hardship to the landlord or the tenant alone that must be taken into account, or whether there is a " claim of third persons whose reflected hardship, so to speak, may be taken into account ".

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

H. V. Perera, Q.C., with *H. W. Tambiah*, for the defendants appellants.

C. Thiagalingam, Q.C., with *P. Somatilakam*, for the plaintiff respondent.

Cur. adv. vult.

October 6, 1954. SANSONI J.—

The plaintiff-respondent in this appeal is the landlord of the two defendants-appellants in respect of premises No. 150, Colombo Street, Kandy. The defendants-appellants have been carrying on in partnership the business of selling sundry goods in those premises since 1938. In 1946 they started an additional business of money lending along with one Alagu, and this business too has been carried on upstairs in these premises since then. There is a third business in tobacco being carried on solely by one Murugesu in those same premises. Murugesu had been a tenant under the respective owners of these premises for as long as the defendants themselves, and he became the tenant of the defendants when they purchased the premises in 1949.

The defendants took a five-year lease of these premises in 1946, from the owner Saul Hamid. In 1949, they purchased the premises from Saul Hamid subject to an agreement to retransfer to him within 4 years. In 1951 the plaintiff bought Saul Hamid's right to get a retransfer, but

agreed contemporaneously to retransfer the premises to Saul Hamid at any time after 8 years, and within 10 years of the execution of that deed of purchase. The defendants necessarily had to convey the premises to the plaintiff after he had bought Saul Hamid's right to get a retransfer from the defendants, and this they did in 1952. The plaintiff is therefore the owner subject to Saul Hamid's right to get a retransfer from him, and he has paid Rs. 36,000 in all to acquire his present right in the property. After he became the owner on 22nd January, 1952, the plaintiff accepted rent from the defendants ; on 27th February, 1952, he gave the defendants notice to quit the premises but the defendants have not yet vacated the premises. The plaintiff brought this action on 6th May, 1952, to have the defendants ejected on the ground that he requires the premises for his trade and business, and the only issue for determination is whether they are reasonably required for that purpose.

The plaintiff runs a fairly large wholesale business in sundry goods in Maturata where he lives. He owns a house and other property there and he says he is worth about half a lakh of rupees. The purpose for which he requires the premises in dispute is an import and export business which he expects to set up. He carried on such a business under a licence in Colombo from 1949 till about the end of 1950, when he says he closed it down because he incurred losses through residing in Maturata which is far away from Colombo. He now wants to restart the business in these premises, apparently hoping that Maturata is not too far from Kandy though the two places are 28 miles apart. But I would emphasise that the plaintiff is not in the position of a person who requires the premises in order to earn his livelihood. He wants them merely to start an additional business and thereby add to what is probably already a fairly large income. The defendants' central place of business is in these premises but they also have a branch at Katugastota. While the former yields a net annual profit of over Rs. 30,000, the latter yields only Rs. 3,000 or 4,000. They had another branch at Ampitiya (another suburb of Kandy) which the 1st defendant says they closed down after receiving the notice to quit, because it was being run at a loss. At Katukelle (yet another suburb of Kandy) they have a room on rent for the purpose of stocking their goods, and it is also used by their employees as sleeping quarters. It is very doubtful whether any trading is done there. The money lending business to which I have referred yields a net annual profit of about Rs. 8,000. The 1st defendant stated in evidence that he had been searching for other suitable premises after he received the notice to quit but he had failed to find any.

The learned Commissioner of Requests gave judgment for the plaintiff and the defendants have appealed. On the very day he delivered judgment the plaintiff applied for execution of his decree (which was presumably entered with the maximum degree of despatch) and the defendants filed their petition of appeal together with an application to stay execution of writ. The Commissioner after inquiry refused to stay execution because he was not satisfied that irremediable or irreparable damage would be caused to the defendants or their business by such execution since they had other places of business. I think the Commissioner failed to give due weight to the fact that it was a business and also

the principal place of that business that were under consideration: in such a case the advantage of continuing to occupy the same premises and the proportionate disadvantage suffered by being forced to leave them, are not matters that should be regarded lightly. The defendants had to seek relief from this order in this Court to obtain a stay of execution. I refer to this matter because I think the Commissioner has in his judgment under appeal also failed to appreciate the importance of the defendants' occupation of these premises since 1938. The value of a business such as this would depend to a large extent on the length of time that it has been carried on in the same premises, for it is to those premises that their customers would naturally have acquired the habit of going. It is little consolation to them to be told that there are other premises available to them " round about Kandy ", which is one reason given by the Commissioner in his judgment. In Katukelle they have a one-room store and in Katugastota they have a branch business. I do not think they would prove adequate substitutes for the premises in dispute. Another reason given by the Commissioner is that the defendants have " sub-let a portion of the premises to a money lending business ", and in veiw of this and the other reason I have already referred to the Commissioner says : " I am unable to resist the conclusion that the need of the defendants is not so great as the need of the plaintiff who has invested a big sum of money in the purchase of these premises to recommence a business for which he holds a licence and which he had to close down at Colombo for the reason that he had sustained losses. I also hold that the sub-letting by the defendants of a portion of the premises to a separate money lending business is contrary to the provisions of the Rent Restriction Act ". Earlier in his judgment also the Commissioner refers to these grounds as the reasons which led him to hold in favour of the plaintiff. With regard to the alleged sub-letting to a money lending business, what happened was that the defendants took in a third partner and added money lending to their other activities ; by doing this they were not sub-letting any portion of the premises. Nor does it follow that because the defendants chose to add money lending to their other pursuits their need of these premises to carry on their business of dealing in sundries became any the less. Apart from this the money lending business was started in 1946 ; even if one assumes wrongly that it amounted to sub-letting, there was no legal bar to such a sub-letting until 1949, when Section 9 of the Rent Restriction Act, No. 29 of 1948, first prohibited it. With regard to the other reason given by the Commissioner, while one sympathises with a man who invests a large sum of money in property in the expectation of getting vacant possession, that factor only indicates his anxiety to obtain the premises but is not a measure of the reasonableness of his claim. Mr. H. V. Perera asked me also to consider the needs of Murugesu who has been running a tobacco business in these premises for many years as a tenant. He submitted that it was relevant to take into account the hardship that would be caused to Murugesu who is now in the position of a sub-tenant. In England under the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, the First Schedule enacts :—(omitting unnecessary words) " A Court shall have power to make or give an order or judgment for the recovery of premises . . . .

or for the ejectment of a tenant . . . . if (*h*) the dwelling-house is reasonably required by the landlord . . . . provided that an order or judgment shall not be made or given . . . . if the Court is satisfied that having regard to all the circumstances of the case, including the question whether other accommodation is available for the landlord or the tenant, greater hardship would be caused by granting the order or judgment than by refusing to grant it". This Court has in many cases decided that it is after weighing in the balance the relative hardship to the landlord and to the tenant that an order granting or refusing ejectment should be made. The further question then is whether it is hardship to the landlord or the tenant alone that must be taken into account, or whether there is a " claim of third persons whose reflected hardship, so to speak, may be taken into account "—see *Harte v. Frampton* [1]. In that case Asquith L.J., in giving the judgment of the Court of Appeal said, " To attempt to define classes, hardship to whom and to whom alone (apart from the parties) can be taken into account (whether as an element entering into the party's hardship, or on its own account) appears to us an unhelpful line of approach to the construction of the proviso. The true view, we think, is that the county court judge should take into account hardship to all who may be affected by the grant or refusal of an order for possession—relatives, dependants, lodgers, guests, and the stranger within the gates—but should weigh such hardship with due regard to the status of the persons affected and their ' proximity ' to the tenant or landlord and the extent to which, consequently, hardship to them would be hardship to him. The inability to take in a guest for the week-end would no doubt be assessed by the judge at nil. The exclusion of a loved and trusted relation, whether dependant or not, would weigh heavily in the scales ". The learned Lord Justice refers to two earlier cases—*Baker v. Lewis* [2] and *Cumming v. Dawson* [3]—where it had been decided that the Court could consider the claims of third parties such as close relations even though they were not dependants.

It is not necessary for me to consider now whether the principle laid down in those cases should be followed by this Court, though I incline to the view that it should be followed. The more difficult question, if I had to decide the matter, would have been whether Murugesu fell within the class of third persons referred to or whether such a class would be confined to relatives and dependants. It seems to me that regardless of Murugesu's claims the defendants have shown that their right to remain in occupation is stronger than the plaintiff's right to obtain possession. I am satisfied that the defendants' principal business as well as their money lending business will be so adversely affected if they are forced to leave these premises as to result in their being left with a mere fragment of what they now own ; the plaintiff on the other hand would only be deprived of the extra profits he may earn if the new business venture should achieve greater success than its predecessor.

For these reasons I allow this appeal and dismiss the plaintiff's action with costs in both Courts.

Appeal allowed.

[1] *(1947) 2 A. E. R. 604.* [2] *(1947) K. B. 187.*
[3] *(1942) 2 A. E. R. 653.*