

1970

Present : Wijayatilake, J.

**R. D. W. GUNAWARDENE, Appellant, and THE URBAN COUNCIL OF KALUTARA, Respondent***S. C. 69/68—C. R. Kalutara, 6232*

*Rent Restriction (Amendment) Act No. 10 of 1961—Section 12—Premises used for commercial purpose—“ Excepted premises ”—Rent Restriction Act, s. 27—“ Residential premises ”—Institution of action—Forum—“ Place of residence ” of defendant—Civil Procedure Code, s. 9 (a).*

Premises of which the landlord is a local authority are “ excepted premises ” within the meaning of section 12 of the Rent Restriction (Amendment) Act No. 10 of 1961 if they are used neither wholly nor mainly for the purposes of residence. However, for the purpose of determining the jurisdiction of the Court in which an action to evict the tenant may be instituted, such premises are “ a place of residence of the defendant ” as contemplated in section 9 (a) of the Civil Procedure Code. The words “ place of residence ” in section 9 (a) of the Civil Procedure Code and “ residential premises ” in the Rent Restriction Act are not synonymous.

**A**PPEAL from a judgment of the Court of Requests, Kalutara.

*W. S. Weerasooria*, for the defendant-appellant.

*Gamini Dissanayake*, for the plaintiff-respondent.

*Cur. adv. vult.*

February 18, 1970. WIJAYATILAKE, J.

The only question which has arisen in this Appeal is as to the nature of the occupation of the premises in question. Mr. Weerasooria, learned counsel for the defendant-appellant, submits that the plaintiff has failed to prove that these premises are other than residential premises as contemplated in Section 12 of the Rent Restriction (Amendment) Act No. 10 of 1961.

Admittedly, the plaintiff is the owner of these premises and the Rent Restriction Act is in operation in this area. Section 27 of the Rent Restriction Act sets out that “ residential premises ” mean premises for the time being occupied wholly or mainly for purposes of residence. Therefore the question arises in the instant case whether the premises are wholly or mainly occupied for purposes of residence. If so it would not be open to the plaintiff to pursue this Action in view of the protection extended by the Rent Restriction Act.

Mr. Dissanayake, learned Counsel for the appellant, submits that on the evidence led in this case both for the plaintiff and the defendant it is clear that the defendant resides elsewhere and he is using these particular premises for a commercial purpose—namely betel selling. The Acting



Secretary of the Plaintiff Council has spoken to the fact of betel selling. The defendant has admitted that he lives at Koholana and he carries on his business of betel selling in Koholana Town. He has categorically stated that he has left a relation in these premises who carries on his business of selling betel. Thus in the light of Section 27 it would appear that these premises are neither wholly nor mainly used for purposes of residence and they would therefore be deemed to be "excepted" premises within the meaning of the Rent Restriction Act.

As Mr. Weerasooria has submitted the evidence led on behalf of the plaintiff is barren and meagre but in my opinion the defendant has in his cross-examination made a significant admission in regard to the nature of the occupation of these premises and the learned Commissioner has accordingly held with the plaintiff.

There is another aspect to the question which has arisen. On my invitation this Appeal was listed for further argument on 9.12.69 as an earlier date suitable to both Counsel was not available. On a perusal of the pleadings in this case it is quite clear that both parties have gone on the footing that the defendant is resident in the premises from which he is sought to be evicted. The plaint sets out the address of the defendant as the premises in question and it avers that he is resident at Kalutara. There can be no doubt whatever that the residence at Kalutara mentioned therein is in reference to the address of the defendant given in the caption. The defendant had admitted this averment and the Court has entertained the plaint and exercised jurisdiction on this basis.

The jurisdiction in the instant case is determined by Section 9 (a) of the Civil Procedure Code—"the place of residence of the defendant". Having pleaded thus is it open to the plaintiff in the same breath to say that the defendant is not resident in these premises?

Mr. Weerasooria has drawn my attention *inter alia* to the case of *Mendis v. Perera*<sup>1</sup> where Pereira J. held that a person is said to "reside" in a place as set out in Section 9 (a) C.P.C. where he has his family establishment and home; and the Divisional Bench judgment *In re Goonewardene*<sup>2</sup> where in Insolvency proceedings it was held that a man's residence is not dependent altogether on the physical occupation of any house.

Mr. Dissanayake submits that the averment in the plaint in regard to residence is that the defendant so resides for the purpose of carrying on business. He relies on the case of *Davies v. British Geon Ltd.*<sup>3</sup> where it was held that there is no distinction between the words "residing" and "carrying on business" in relation to a corporation under the English procedural law. He accordingly submits that the descriptive word "resides" as used in Section 9 (a) C.P.C. is wide enough to include an individual who is not resident but in occupation for the purpose of carrying on business. I am unable to agree with this interpretation.

<sup>1</sup> (1909) 13 N. L. R. 41.

<sup>2</sup> (1923) 24 N. L. R. 431.

<sup>3</sup> 1956 A. E. R. 404.



In the case of *Cassim v. Saibo*<sup>1</sup> Macdonell C.J. (with Dalton S.P.J. agreeing) held that though a man can have but one domicile at any moment there is nothing to prevent him from having at one time two or more "residences"—within the meaning of Section 9 (a).

In my opinion the Urban Council of Kalutara having come into Court on the basis that the defendant is "resident" in the premises in question as contemplated under Section 9 (a) C.P.C. and invited the Court to exercise jurisdiction accordingly it would not be open to them to now withdraw from this position. If this submission of the plaintiff that the defendant is not resident in these premises is upheld the result would be that the Court has been misled into entertaining the plaint and assuming jurisdiction. I would accordingly hold that the premises in question are "a place of residence of the defendant" as contemplated in Section 9 (a) C.P.C. However, the matter does not end there as we have to ascertain whether these premises are residential "premises" within the meaning of the Rent Restriction Act. The words "place of residence" in Section 9 (a) C.P.C. and "residential premises" in the Rent Restriction Act are not synonymous. Section 27 defines "residential premises" as any premises for the time being occupied *wholly* or *mainly* for the purposes of residence and "business premises" as any premises other than residential premises as defined above.

On the evidence led in this case, as I have already observed, on the admission of the defendant himself, these premises are occupied neither wholly nor mainly for the purposes of residence. In the circumstances they would be "business premises" within the meaning of the Rent Restriction Act.

I would accordingly dismiss the appeal with costs.

*Appeal dismissed.*

