
1965

Present : Sansoni, C.J., and Sirimane, J.

B. SEDIRIS SINGHO, Appellant, *and* D. J. WIJESINGHE,
Respondent

S. C. 417/63—D. C. Avissawella, 10116/M.

Rent Restriction Act—Inapplicability to lease of a business carried on at any premises.

Plaintiff leased to the defendant for a period of 3 years the business of a hotel carried on at certain premises, together with goodwill, shop fittings, furniture, utensils and implements of trade. At the expiry of the period of 3 years the defendant was to yield up peaceful possession of the business and premises to the plaintiff.

The defendant claimed that what was leased to him was a furnished apartment and that it was governed by the Rent Restriction Act.

Held, that the transaction between the parties was not a lease of a building but of a business. The defendant's position while he was in occupation of the premises was no more than that of a licensee. The Rent Restriction Act, therefore, had no application to the case.

APPEAL from a judgment of the District Court, Avissawella.

H. V. Perera, Q.C., with *Ralph de Silva*, for the Defendant-Appellant.

H. W. Jayewardene, Q.C., with *G. T. Samerawickrame, Q.C.* and *I. S. de Silva*, for the Plaintiff-Respondent.

Cur. adv. vult.

December 14, 1965. SANSONI, C.J.—

The parties to this action entered into an indenture on 19th August 1958 whereby the plaintiff leased to the defendant the business called Wijeyasiri Hotel at No. 23, Ratnapura Road, Avissawella, together with goodwill, shop fittings, furniture, utensils and implements of trade, all of which were set out in detail in an annexed list. The lease was for a period of 3 years commencing from 10th January, 1958, at a rental of Rs. 250 a month. The defendant agreed to pay a further sum of Rs. 500 by way of deposit, and also Rs. 750 being arrears of rent; he also agreed to take care that the reputation of the business was not impaired in any way. The plaintiff was to be entitled to visit and inspect the business at any time he pleased. At the expiry of the period of 3 years the defendant was to yield up peaceful possession of the business and premises to the plaintiff. The schedule to the agreement reads "All that business called and known as Wijeyasiri Hotel carried on at premises No. 23" (the boundaries of which premises are there set out).

A contemporaneous writing was signed by the defendant, whereby he undertook to pay the sum of Rs. 1,976/63 in monthly instalments within six months to the plaintiff as the price of certain articles forming the stock in trade there lying in the hotel.

The plaintiff has asked that he be restored to possession of the said business and given delivery of the articles mentioned in the list annexed to the indenture, and that the defendant be ejected from the hotel premises, as the lease has expired. The plaintiff has also claimed damages at the rate of Rs. 1,000 a month until he is restored possession.

The defendant pleaded that what was leased to him was a furnished apartment which is governed by the Rent Restriction Act; and that he is a statutory tenant of the premises leased to him.

The only questions that arise on this appeal are whether the District Judge was right in holding that the transaction between the parties was not a lease of a building but of a business ; and if so, whether the damages he awarded at the rate of Rs. 400 a month from 10th January 1961 are excessive.

I have no doubt, on a consideration of the indenture and the contemporaneous writing, that the transaction was merely one of placing the lessee in charge of the hotel business for a definite period with a view to his carrying it on for three years : the lessee was also, in order to fulfil this agreement, put in possession of the premises in which that business was being run. There was no agreement here to rent the premises, nor was the rent agreed on between the parties payable in respect of the premises. The defendant's position while he is in occupation of those premises is no more than that of a licensee. Consequently the Rent Restriction Act has no application to this case.

I am in entire agreement with the judgment of Nagalingam, S.P.J. in *Charles Appuhamy v. Abeyesekera*¹, where the learned Judge had to construe an indenture very similar in terms to the one before us. The case of *Nicholas Hamy v. James Appuhamy*² dealt with a document which was worded very differently, and which made it clear that a certain building was the subject of lease in that case, and not the business that was being carried on at that building.

With regard to the question of damages, the learned Judge has awarded Rs. 400 a month, apparently because the plaintiff had entered into a subsequent agreement with a third party whereby this business was leased at the rate of Rs. 400 a month. No evidence in proof of damages was led by the plaintiff, and I think the sum of Rs. 250 a month is a reasonable amount.

The decree appealed against is affirmed save that damages will be at Rs. 250 instead of Rs. 400 per mensem from the 10th January, 1961. Subject to this variation the appeal is dismissed with costs in both Courts.

SIRIMANE, J.—I agree.

Appeal dismissed.
