

1953

Present : Rose C.J.

N. SIVAGURU, Appellant, and MRS. C. JANAKI,
Respondent

S. C. 103—C. R. Colombo, 40,937

*Rent Restriction Act—Action for ejectment—Tenant's divestment, pending action,
of alternative accommodation—Factor for consideration.*

In determining the question of the relative hardships which would be incurred by the landlord and the tenant by the granting or withholding of an order for possession in an action for ejectment under the Rent Restriction Act, it would be proper for the court to take into consideration that the tenant had, in the interval between the service of the notice to quit and the hearing of the action, deliberately divested himself of property which was under his hand in order to defeat the landlord's claim for possession of the leased premises.

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

H. W. Tambiah, with *S. Sharvananda*, for the plaintiff appellant.

Vernon Wijetunge, for the defendant respondent.

Cur. adv. vult.

November 12, 1953. ROSE C.J.—

In this matter the plaintiff-appellant suggests that the case should be remitted to the learned Commissioner of Requests to enable him to re-consider the question as to whether the defendant-respondent by her own act divested herself of suitable alternative accommodation after service of the notice to quit and, if so, whether his opinion of the relative hardship which would be incurred by the parties would be modified.

The plaintiff-appellant, who is a man of some means, bought the property in question in December, 1951, the respondent already being in occupation as a tenant of the previous owner. A final notice to quit was given in June, 1952, the plaintiff-appellant contending that the premises were reasonably required by him for the residence of himself and his family.

It appears that the defendant respondent occupied the premises in suit which bore the number 79 of the Street in question. She carried on a firewood business in premises No. 77, which was next door to premises No. 79, and which consisted of a shed which she used as her firewood depot, a lavatory and a bathroom and another small shed into which she had permitted a Tamil family consisting of a man and wife and four or five children to occupy.

Although the date of the granting of this permission is not quite clear from the evidence, it is suggested by learned counsel for the appellant—and it may be so—that this permission was given after the service of the notice to quit.

As Mr. Megarry points out in his book on the Rent Acts (7th edition) at page 270, it will usually be irrelevant in considering a landlord's circumstances to consider past events, such as the sale by the landlord of another house which would have provided an alternative home for him, the principle, of course, being that a landlord is entitled if he wishes to select from the properties at his disposal which one he desires to occupy for himself. Mr. Megarry points out, however, that this principle "applies with diminished force if at all" to the tenant's circumstances, as for instance where he has failed to accept other accommodation in the past. *A fortiori* the principle would not seem to be applicable to a tenant who in the interval between the service of the notice to quit and the hearing of the action has deliberately divested herself of property which was under her hand in order to defeat the plaintiff's claim for possession.

It seems that in such a case it would be proper for a court to take this factor into consideration in determining the question of the relative hardships which would be incurred by the parties by the granting or withholding of an order of possession.

After careful consideration of the facts of the present case, however, I consider that it is undesirable and indeed would put the parties to unnecessary expense to remit the matter for further consideration of this issue. It appears from the evidence of the respondent that the shed into which she allowed the Tamil family to lodge is small and in the main unsuitable for human occupation. She states—and her statement was not challenged in cross-examination—that the premises were so cramped that the children were allowed to sleep in her own premises at No. 79. The respondent's position is that her sole means of support is this small firewood business, which necessitates her living at or near her firewood depot. She has living with her her mother and her niece who have no means of livelihood and who have been dependent upon her for the last eight years.

As against this the plaintiff was found by the learned Commissioner not to have established a case of equal need. I agree with the learned Commissioner's assessment of the respective hardships of the parties and in the circumstances see no reason to dissent from his conclusions.

The appeal is therefore dismissed with costs.

Appeal dismissed.

