

1957 Present : Basnayake, C.J., and L. W. de Silva, A.J.

PIR MOHAMED, Appellant, and H. KADHIBHOY, Respondent

S. C. 140—D. C. Colombo, 28365

Rent Restriction Act, No. 29 of 1948—Business premises—Subsequent incorporation of the business as a limited company—Right of tenant to continue in occupation—“ Non-occupying tenant ”.

When a tenant carries on business in his individual capacity in the premises let to him he does not forfeit the protection of the Rent Restriction Act if his business is subsequently incorporated as a company, with the tenant holding most of the shares.

The English concept of a “ non-occupying tenant ” is not applicable to the Rent Restriction Act.

APPPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *Carl Jayasinghe* and *C. Chellappah*, for the Defendants-Appellants.

H. W. Jayewardene, Q.C., with *M. I. M. Haniffa* and *P. Ramasinghe*, for the Plaintiff-Respondent.

¹ (1923) *Times of Ceylon L. R.* 281.

October 14, 1957. BASNAYAKE, C.J.—

The plaintiff-respondent who is the owner of premises No. 168 situated in Fourth Cross Street, Pettah, instituted this action against the defendant-appellant, his tenant, to have him ejected from the premises on the following grounds :—

- (a) that they are reasonably required for his occupation,
- (b) that the defendant has sublet the premises to the added-defendant without his consent in writing in contravention of section 9 of the Rent Restriction Act, and
- (c) that the defendant being a non-occupying tenant who has permitted the added-defendant to enter into occupation is bound to restore possession of the premises to the plaintiff, and the defendant has no right to remain in occupation.

The learned trial Judge has decided the first and second grounds in favour of the defendant and the third in favour of the plaintiff. Shortly the material facts are as follows :—The defendant Haji Habib Haji Pir Mohamed was carrying on business under the business name of Haji Habib & Co. at the premises in question. On 31st March 1952 a company with limited liability under the name of Haji Habib & Co. (Ceylon) Ltd. was incorporated with its registered address at the premises in question. The defendant owns 11989 out of 12000 shares in this Company. It was claimed on behalf of the plaintiff on the authority of the case of *Sabapathy v. Kularatne*¹ that on the incorporation of the Company the defendant became a non-occupying tenant who is not entitled to the protection afforded by the Rent Restriction Act.

Learned counsel for the respondent does not seek to support the judgment of the learned District Judge on the ground that the defendant became a non-occupying tenant nor does he rely on the case of *Sabapathy v. Kularatne* (*supra*), on which the learned District Judge based his judgment. We are unable to agree with the decision in *Sabapathy v. Kularatne* (*supra*). That case introduces the English concept of a "non-occupying tenant". We can find no authority in our Rent Restriction Act for such a course.

Learned counsel for the respondent sought to support the judgment on the ground that the premises had been sub-let contrary to the terms of section 9 of the Rent Restriction Act No. 29 of 1948. The onus of proving the sub-letting is upon the plaintiff. The District Judge has found that there is no proof of sub-letting. Learned counsel for the respondent, though invited by us, was unable to draw our attention to any specific evidence which supported the claim that the premises had been sub-let contrary to the terms of the enactment. We are unable to uphold his contention on this ground.

For the reasons stated by us earlier, the appellant is entitled to succeed. We allow the appeal and dismiss the plaintiff's action. The appellant will be entitled to costs both here and in the court below.

L. W. DE SILVA, A.J.—I agree.

Appeal allowed.

¹ (1951) 52 N. L. R. 425.