1952 *Present :* **Gratiaen J., Pulle J. and L. M. D. de Silva J.**

MOHAMED ABDULLA, Appellant, *and* SEYD ISMAIL BUHARI, Respondent

S. C. 152—C. R. Colombo, 24,493

Rent Restriction Act, No. 29 of 1948—Section 13 (1) (c)—Premises required for trade or business—Landlord has other partners in business—His right to eject tenant.

Where a partner in a certain business sought to recover from his tenant possession of certain premises on the ground that he required them for the purpose of the partnership business—

Held, that it was not necessary for a landlord, in order to avail himself of the provisions of section 13 (1) (c) of the Rent Restriction Act, to show that the business was carried on by him as sole proprietor. The words " business of . . . . the landlord " covered the interest of a landlord in a partnership business.

Hassanally v. Jayaratne [1] overruled.

APPEAL from a judgment of the Court of Requests, Colombo. It was referred to a Bench of three Judges at the instance of Swan J. before whom it came up for hearing.

C. Thiagalingam, Q.C., with *M. Rafeek* and *C. Shanmuganayagam,* for the 1st defendant appellant.—This matter relates to the construction of section 13 (1) (c) of the Rent Restriction Act, No. 29 of 1948. The

[1] *(1948) 50 N. L. R. 140.*

plaintiff in the present case seeks to recover possession of the property from his tenant on the ground that he requires it for the purposes of a business in which he has a partnership interest. In *Hassanally v. Jayaratne* [1], the Court, in interpreting the corresponding section, namely, section 8 (*c*), of the earlier Rent Restriction Ordinance, No. 60 of 1942, held that what partnership interest a landlord may have in a partnership business would not amount to " a business of the landlord ". This view, it is submitted, is correct. In order to interpret section 13 (1) (*c*) it is useful to look at the framework of the Act. The present Act changed the earlier Ordinance in material respects—*de Alwis v. Perera* [2]. The effect of this change is to give a more restrictive interpretation to the word " landlord ". The Court must give the same meaning to the word " landlord " at the end of section 13 (1) (*c*) as in the rest of the Act. " Occupation " means physical occupation for purpose of individual user. " Partnership interest " is not " business ". As to what is meant by " owning a business " see *Mohamed v. Warind* [3]. A partnership business does not belong to the co-partners. The object of the Act is the security of the tenant and as restrictive an interpretation as possible must be given to section 13 (1) (*c*). See *Baker v. Lewis* [4]; *Reigate Rural District Council v. Sutton District Council* [5]; *Shannon Realities Ltd. v. Ville De St. Michel* [6]; *Sangaralingam Pillai v. Mohamadu* [7]; *Hassanally v. Jayaratne* (*supra*).

H. V. Perera, Q.C., with *C. Renganathan*, for the plaintiff respondent.—*Hassanally v. Jayaratne* (*supra*) is wrong if the authority for the decision is the English case *Baker v. Lewis* (*supra*). The fact that another person owns the business is a matter which only affects the question of " reasonableness ". See *Hawke v. Frampton* [8]. A restrictive interpretation should not be placed on the proviso which relaxes the restriction in the section itself. *Baker v. Lewis* (*supra*) has not been correctly applied in *Hassanally v. Jayaratne* (*supra*). See *McIntyre v. Hardcastle* [9].

C. Thiagalingam, Q.C., in reply.—If two interpretations are possible the Court should adopt that interpretation which has reference to the objects of the Act.

Cur. adv. vult.

December 11, 1952. L. M. D. DE SILVA J.—

In this case the correctness of the decision of this Court in *Hassanally v. Jayaratne* [1] is disputed. It has been referred by My Lord the Chief Justice to a Bench of three Judges at the instance of Swan J. before whom it came up for hearing.

[1] *(1948) 50 N. L. R. 140.*
[2] *(1951) 52 N. L. R. 433, at p. 443.*
[3] *(1919) 21 N. L. R. 225, at p. 230.*
[4] *(1946) 2 A. E. R. 592.*
[5] *(1908) 99 L. T. 168.*
[6] *(1924) A. C. 185.*
[7] *(1950) 51 N. L. R. 297.*
[8] *(1947) 2 A. E. R. 604, at p. 606.*
[9] *(1948) 1 A. E. R. 696.*

In this case a partner in a certain business is seeking without the authorisation of the Board to recover from his tenant possession of certain premises on the ground that he needs them for the purpose of the partnership business. A condition for such a recovery is laid down in clause (*c*) in the proviso to sub-section 13 (1) of the Rent Restriction Act No. 29 of 1948 thus :—

> " The premises are, in the opinion of the Court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord, or for the purposes of the trade, business, profession, vocation or employment of the landlord. "

The question which arises in this case is whether this condition has been satisfied.

It was argued that this clause should be interpreted narrowly against a landlord as the general object of the Ordinance is to restrict the rights of a landlord. We cannot agree. The clause seeks to relax the disabilities elsewhere placed upon landlords by the Ordinance and there is no reason to interpret it in the manner suggested.

Then it was said that the interest of the landlord in the business must be full and unqualified proprietorship and that he must be the sole proprietor. It was contended that the rights and interests of a partner in a partnership business fall short of such proprietorship. We do not feel able to agree. It was necessary for counsel for appellant, in order to maintain this point, to go so far as to contend that where there is more than one landlord and all the landlords are partners in a business they cannot seek the aid of the clause to regain possession of the premises let. We think that in the context in which they appear the words " business of . . . . the landlord " cover the interest of a landlord in a partnership business.

On the question whether the landlord must require the premises for himself alone we are of the opinion that so long as it is established that the landlord requires the premises for himself the condition is satisfied, and that it is immaterial whether he requires the premises for himself alone or for himself and others. It may be that the interest of the plaintiff in a business when compared with the interest of others for whom along with himself he wants the premises is relatively small. This is a consideration which would weigh in deciding whether the request of the landlord is " reasonable " or not, but it does not in our view affect the conclusion that the premises are " required " by the landlord within the meaning of the clause. In this case he requires the premises for himself and his partners and we do not think that this fact avoids the claim. The question of reasonableness has not been raised on this appeal and we need not consider it.

It follows from what we have said that if there are several landlords who with others are partners in a partnership business it is sufficient if all the landlords require the premises and that it is immaterial that they require the premises not only for themselves but for themselves

and the other partners. A contrary view was taken in the case of *Hassanally v. Jayaratne* (*supra*) which was based upon the decision in the case of *Baker v. Lewis* [1]. With all respect we think the latter case can and should be distinguished. That case supports the proposition that where there are more landlords than one it must be shown that each of them has an interest in the business but it leaves unaffected the view that it is immaterial that persons other than the landlords have also such an interest.

For the reasons we have given the appeal is dismissed with costs.

GRATIAEN J.—I agree.

PULLE J.—I agree.

Appeal dismissed.