

1970

Present : H. N. G. Fernando, C.J.

H. D. SIRISENA, Appellant, and Mrs. P. A. E. PIERIS, Respondent

S. C. 43/68—C. R. Colombo, 92245/R.E.

Landlord and tenant—Payment of rents—Evidence of tenant that landlord refused to issue receipts—Credibility—Rent Restriction Act (Cap. 274), s. 16—Landlord's refusal to accept rents—Effect.

Evidence given by a tenant that he had regularly paid rents to the landlord but that no receipts were ever issued to him should not be disbelieved merely on the ground that he did not take steps under section 16 of the Rent Restriction Act to compel the landlord to issue receipts.

If a landlord wrongly refuses to accept rents tendered to him in the form of Postal Orders or other means of payment, the Court may order them to be delivered to him on condition that if he is for any reason unable to obtain payment upon any such document, he will have to bear the consequent loss.

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

M. Tiruchelvam, Q.C., with *S. A. Marikar*, for the defendant-appellant.

D. R. P. Goonetilleke, for the plaintiff-respondent.

Cur. adv. vult.

October 4, 1970. H. N. G. FERNANDO, C.J.—

The principal finding of the learned trial Judge in this action for ejectment of a tenant is that the tenant had been in arrears of rent from June 1964 to October 1965.

The case for the plaintiff was that the rent charged was Rs. 7.50 per month, and that rent at this rate had been paid up till May 1964, but not thereafter.

The defendant stated in evidence that the rent had been Rs. 15 per month, which he had paid regularly to the plaintiff each month until February 1965, but that no receipts were ever issued to him. It was proved that the defendant tendered rent as Rs. 15 per month thereafter through the Rent Control Board, but that these payments were not accepted by the plaintiff.

There appear to be three grounds on which the learned Commissioner accepted the plaintiff's evidence as true.

Firstly, he points out that prior to February 1965, the tenant had made no allegation to the Rent Control Board that the rent charged had been Rs. 15. But he did not realize that at that stage the tenant was quite willing to pay Rs. 15 per month; in fact from March 1965 and even

after the filing of this action, the tenant regularly remitted payments to the Board at the rate of Rs. 15 per month. It was only as a defence to the action for ejection that the tenant claimed that excessive rent had been charged.

Secondly, the learned Commissioner thought that if no receipts had been issued, the tenant "should have got an order to compel the landlord to issue receipts". While it is correct that s. 16 of the Act imposes a duty on landlords to issue receipts, it is nevertheless well known, particularly in our Courts, that rent receipts are often not issued, and that tenants ignore this default if they are content to pay something higher than the authorised rent. I have not yet come across any case in which a landlord has been prosecuted for a failure to issue receipts.

Since the first two grounds on which the Commissioner relied were unsound, there remains only the third ground, namely that the rent receipt book P1 appeared to be genuine and that according to the book the last receipt issued to this tenant had been for the May 1964 rent. But there were in my opinion many proved circumstances which tended to show that the tenant had paid rent for subsequent months.

On 18th February 1965, the tenant made a statement D14 to the Grama Sevaka that the nuts and branches of a coconut tree standing behind the house had been falling on the roof and endangering the safety of the tenant's child; he complained that the landlord had paid no attention to this matter. On action taken by the Grama Sevaka, the landlord had got the branches cut. What is significant is that after this unpleasantness between the parties, the tenant thought it wise to pay his rent through the Rent Control Board; prima facie at least, the tenant's conduct in paying the rent for March and April 1965 to the Board, renders it likely that he had duly paid the rent direct for previous months.

On 31st April 1965, the landlord's lawyers wrote the letter D1 to the tenant, stating that the landlord proposed to demolish the house because it was in a dilapidated condition, and giving notice to the tenant to vacate the premises. The lawyers surely knew that the ground stated in this notice is not a ground on which s. 13 of the Act permits a Court to enter decree for ejection. But, if the landlord's evidence is true, namely that the rent had been in arrear from June 1964, the landlord's obvious failure to inform his lawyers of that extremely important fact is to me inexplicable. Indeed, it was not until July 1965, in a letter to the Rent Control Board, that the landlord first took up the position that the tenant had been in arrears for a very long period.

In my opinion, the proved conduct of the parties afforded the best test as to the truth of their conflicting evidence on the question whether or not rent had been paid for periods subsequent to June 1964; the landlord's evidence, when tested in this manner, was quite unworthy of belief.

If the Postal Orders or other means of payment tendered by the defendant are in the custody of the Court or of the Rent Control Board, they must be delivered to the plaintiff. But if the plaintiff is for any reason unable to obtain payment upon any such document, she will have to bear the consequent loss.

The appeal is allowed, and the plaintiff's action is dismissed with costs in both Courts.

Appeal allowed.

