

1967

*Present : Sirimane, J.*

S. A. JAMALDEEN, Appellant, and A. MANAFF, Respondent

S. C. 77/67—C. R. Kandy, 19033

*Rent Restriction (Amendment) Act, No. 12 of 1966—Sections 2 and 4—Scope of retrospective effect of section 4 (1)—Sub-letting—Rent Restriction Act, s. 12 A (1) (b).*

The retrospective operation of the provisions of section 4 (1) of the Rent Restriction (Amendment) Act, No. 12 of 1966, is not applicable to a pending action in which a landlord claims the right to eject his tenant on the ground of sub-letting.

**A**PPEAL from a judgment of the Court of Requests, Kandy.

*P. Somatillekam*, with *P. Edusuriya*, for the Plaintiff-Appellant.

*B. J. Fernando*, for the Defendant-Respondent.

October 28, 1967. SIRIMANE, J.—

This was an action for ejectment filed by the plaintiff on 27.7.65 on the grounds :—

- (a) That the premises were reasonably required by him for his occupation, and
- (b) That the defendant had sub-let these premises.

It was admitted that the Rent Restriction Act applied to these premises and that the rental value of the premises was under Rs. 100/- per month. Answer was filed by the defendant on 3.9.66. Between these dates (i. e., on 10.5.66) the Amending Act 12 of 1966 was passed. The effect of that Act is, to further restrict a landlord's right to file an action for ejectment, where the rental value of the premises is under Rs. 100/- per month. But Section 12A (1) (introduced by Section 2 of the Amending Act) sets out those instances in which the landlord may still file an action for ejectment even where the rental value is under Rs. 100/- per month. Section 12A (1) (b) empowers the landlord to sue for ejectment when the premises have been sub-let by the tenant.

By Section 4 the provisions of this Act were made retrospective as from 20th July, 1962.

On the date that the Amending Act was passed, there would have been many actions pending in the Courts filed after 20.7.62 for ejectment on grounds not permitted under Section 12A (1) so that, in order to give effect to its retrospective operation, it was necessary that such pending actions should be declared null and void : Section 4 (1) provides that *accordingly* an action instituted on or after 20.7.62 and pending at the time the Amending Act came into force should be deemed to have been null and void.

In my opinion the provisions of this Section are applicable to pending actions for ejectment (where the rental value of the premises is under Rs. 100/- per month) on grounds other than those set out in Section 12A (1).

The learned Commissioner has dismissed the plaintiff's action, and merely stated that he holds that the action pending before him is null and void by virtue of the Amending Act without specifying any reason why he had reached that conclusion. I am of the view that this was an action which the plaintiff, the landlord, could have filed even after the Amending Act came into operation retrospectively, as he claimed the right to eject the defendant on the ground of sub-letting as well. Section 4 (1)A therefore does not render this action null and void.

I set aside the decree dismissing the plaintiff's action and send the case back for trial by the learned Commissioner.

It was submitted by counsel for the defendant that the pleadings are not clear as it has been stated in the plaint that notice to quit was given to the defendant *for the reason* that the premises were reasonably required by the plaintiff and that he had sub-let the premises. The plaintiff should be given an opportunity of amending the plaint if he so desires. He is entitled to the costs of this appeal.

*Decree set aside.*

