

1967

Present: Samerawickrame, J.

M. SEYED MOHAMED, Appellant, *and* M. H. M. MEERA PILLAI,
Respondent

S. C. 19/66—C. R. Colombo, 87093/R.E.

Rent Restriction Act—Section 9—Sub-letting—Quantum of evidence.

The question was whether the defendant had, in contravention of section 9 of the Rent Restriction Act, sub-let a part of the premises rented to him by the plaintiff. The evidence disclosed that one A. C. was in sole and exclusive occupation of a room of the premises and that he carried on business in that room. The defendant took up the position that no rent was paid to him by A. C. and that the latter had been let into occupation of the room before the defendant became the tenant of the premises.

Held, that, in the absence of acceptable evidence to explain A. C.'s occupation, the only inference was that A. C. was in occupation as a sub-tenant paying rent to the defendant.

Held further, that, where sub-letting is continued, there is a continued breach by the tenant of the statutory provision against sub-letting.

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

C. Ranganathan, Q.C., with *K. N. Choksy* and *L. A. T. Williams*, for defendant-appellant.

H. V. Perera, Q.C., with *M. S. M. Nazeem*, for plaintiff-respondent.

Cur. adv. vult.

March 15, 1967. SAMERAWICKRAME, J.—

The learned Commissioner of Requests has entered decree for ejectment of the defendant-appellant on the ground that he has sub-let a part of the premises in suit, No. 82, Messenger Street, Colombo, to one Abdul Cader.

The greater part of his judgment deals with the question whether the premises were reasonably required by the plaintiff-respondent. On that point, he held against the plaintiff-respondent. There is no careful examination and analysis of the evidence touching the question of sub-letting. It is necessary, therefore, to examine that evidence.

The plaintiff-respondent produced documents P2 to P5 which are the certificates of registration of a business called the Happy Flower Brassiere Co. They indicate that Abdul Cader was carrying on the business of a manufacturer of brassieres and garments in the premises in suit for some period by himself, and during other periods in partnership with another. These documents also show that the usual residence of Abdul Cader was not in these premises but in 81, Messenger Street. The Surveyor who was called by the plaintiff-respondent has spoken to the fact that the business of Happy Flower Brassiere Co., was carried on in a room marked lot 7 in his plan and that in that room there were three sewing machines and three girls working. Abdul Cader has given evidence for the defendant and from his evidence it appears that he commenced business in partnership with one Sumanawathie at Welikada and as his business improved, he decided to move closer to Pettah. He obtained the room at No. 82, Messenger Street, from one Hamid who was a relation of his and he had in that room three sewing machines, three employees working there, a writing table and a chair. He stated that the profits from his business is about Rs. 2,500 an year and that was net profit. He said that he got orders from Pettah, Maradana, Borella, Fort and sometimes from the Wellawatte and Dehiwela areas and that he went in search of orders during the daytime as well as in the night. He admitted that it was essential for his business to go out during the daytime in search of orders and that he did go to the Pettah bazaar two days in the week. He denied, however, that he paid any rent and stated that he was allowed to occupy a room and carry on business there rent free because he was looking after the goods of the defendant that were stored in the premises.

The defendant too took up the position that no rent was paid by Abdul Cader but that he was permitted to occupy the room that has been depicted as lot 7 in the plan in the premises in consideration of his looking after his goods that were stored in premises No. 82, Messenger Street. At a certain point of his cross-examination, the defendant denied that Abdul Cader was a watcher and in answer to a question whether the room was given to Abdul Cader to safeguard the goods that the defendant was storing in the premises replied, "he was doing his own business in that room". It appears to me that the position taken up by the defendant is not in accordance with fact and has been put forward merely to meet the case for the plaintiff. The evidence discloses that Abdul Cader was in sole and exclusive occupation of a room at No. 82, Messenger Street, and that he carried on business in that room. In the absence of acceptable evidence to explain his occupation, the only inference is that he is in occupation as a sub-tenant of the defendant and on payment of rent to him.

Mr. Ranganathan for the defendant-appellant further submitted that in any event the evidence showed that Abdul Cader had been let into occupation of the room before the defendant became the tenant of the premises. He relied on a dictum of Manicavasagar J. in the case of *Fernando v. de Silva*¹ to the effect that in the case of a monthly tenancy, once a tenant is let into occupation, the tenancy runs from month to month until it is terminated by a month's notice. He accordingly submitted that there has been no sub-letting by the defendant and that no right to ejectment in terms of Section 9 of the Rent Restriction Act had accrued to the plaintiff. Sansoni J. has, however, in the case of *Kalandankutty v. Wanasinghe*² held that where the sub-letting is continued, there is a continued breach by the tenant of the statutory provision against sub-letting.

I am, therefore, of the view that the order of the learned Commissioner decreeing ejectment of the defendant on the ground that he has sub-let part of the premises to Abdul Cader is justified. The appeal is dismissed with costs.

Appeal dismissed.

