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

ABDEEN, Appellant, *and* PARAMASIVAN PILLAI, Respondent

S. C. 195—D. C. Colombo, 18,460

Rent Restriction Ordinance—Joint tenancy— Quantum of rent chargeable—Authorised rent.

Where premises were let as a whole to two persons jointly, each of whom occupied separate portions in respect of which they paid rents separately to the landlord—

Held, that the rent received by the landlord for the two portions of the premises should not exceed in the aggregate the authorised rent under the Rent Restriction Ordinance for the whole premises.

APPEAL from a judgment of the District Court, Colombo.

E. B. Wikramanayake, Q.C., with *S. Thangarajah*, for the defendant appellant.

H. V. Perera, Q.C., with *T. Somasunderam*, for the plaintiff respondent.

Cur. adv. vult.

November 4, 1952. L. M. D. DE SILVA J.—

The plaintiff in this case says that in February, 1945, he took premises No. 203, Keyser Street, Colombo, on rent from the defendant jointly with one Poopalarayan for an aggregate sum of Rs. 285 a month of which he was to pay Rs. 85 a month and Poopalarayan Rs. 200 a month. It is common ground that the authorised rent for the premises as a whole under the Rent Restriction Ordinance was a sum of Rs. 120·17. The plaintiff says that there is an over-payment of Rs. 5,760·07 and of this he claims a sum of Rs. 1,678·70 as his share. Learned counsel for the defendant-appellant concedes that if the joint tenancy is established the plaintiff-respondent is entitled to the sum which he claims.

Upon the evidence the learned District Judge has held that the defendant " did not enter into any specific agreement with one or other of the persons in occupation with regard to letting to each only a portion of the premises " and he took the view that the premises had been let as a whole to the two persons concerned. Mr. Perera for the plaintiff-respondent contends that there is one contract between the plaintiff, the defendant and Poopalarayan for the whole of the premises although plaintiff and Poopalarayan agreed to pay their shares of the rent separately to the landlord. Mr. Wikramanayake contends that if the plaintiff and Poopalarayan paid agreed amounts of rent to the defendant there were two contracts and not one, but he admits that even in that case the two separate contracts would be in respect of the whole premises.

There is evidence upon which the District Judge's finding that the premises as a whole were let can be sustained and I am not disposed to disturb that finding particularly in view of the fact that the defendant has not chosen to give evidence and to state that two separate portions were let to the plaintiff and to Poopalarayan respectively. There is evidence that the plaintiff and Poopalarayan received separate rent receipts but this circumstance, although of some evidentiary value in support of the defendant's case, does not conclude the case in his favour. There is also evidence that the plaintiff and Poopalarayan occupied separate portions but there was no definite demarcation between the two portions. The manner of occupation could always be a matter of agreement between the tenants themselves and would not by itself be decisive of the question whether the whole of the premises was let to both the persons or a divided portion to each. The circumstances relied on by the appellant do not afford reason sufficient for disturbing the learned District Judge's finding.

The view we take of the nature of the tenancy renders it unnecessary to go into some of the difficult and complicated questions which arise out of joint tenancy and joint obligations. Upon the view taken by the learned District Judge that the whole of the premises were let the defendant could have recovered only the authorised rent under the Rent Restriction Ordinance for the whole premises. The contention for the defendant has been that two portions of the premises have been let separately, that each of these portions is a " premises " for which no assessment has been made and that he might charge for each of the two portions rent which in the aggregate exceeds the authorised rent. The whole of this contention fails where the premises have been let as a whole.

The appeal is dismissed with costs.

PULLE J.—I agree.

Appeal dismissed.