

1969

Present : Samerawickrame, J.

K. HASSAN, Appellant, and A. O. NAGARIA, Respondent

S. C. 36/68—C. R. Colombo, 89925

Landlord and tenant—Disclaimer of tenancy by tenant—Notice to quit not necessary then.

A tenant who disclaims tenancy is not entitled to a notice to quit before action in ejection is instituted against him.

¹ *Monir on Evidence (4th edition), Vol. II, p. 685.*

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

J. W. Subasinghe, for the defendant-appellant.

K. Shanmugam, for the plaintiff-respondent.

Cur. adv. vult.

October 15, 1969. SAMERAWICKRAME, J.—

Counsel for the defendant-appellant submitted that the contract of tenancy between the parties had not been terminated by a notice to quit duly given. Learned counsel for the plaintiff-respondent, while submitting that notice to quit had been duly given, contended that it was not open to the defendant-appellant to seek to have this action dismissed on the ground that no valid notice was given because the defendant who disclaimed tenancy was not entitled to a notice to quit. In *Muttu Natchia v. Patuma Natchia*,¹ was held that a tenant who disclaimed to hold of his landlord and puts him at defiance is not entitled to have the action against him dismissed for want of a valid notice to quit. This decision was followed in *Sundera Ammal v. Jusey Appu*², and in *Pedrick v. Mendis*³. In this case the defendant-appellant has denied tenancy under the plaintiff-respondent and the latter had to prove tenancy in the action. In view of the authorities that have been cited to me, I hold that no notice to quit need have been averred or proved in the circumstances of this case.

Learned counsel for the defendant-appellant also submitted that the plaintiff had failed to prove the quantum of arrears of rent satisfactorily because, though he stated that he had books of accounts which showed the receipts of rent, he failed to produce them. The defendant however denied that he had paid any rent to the plaintiff-respondent. Though under stress of cross-examination when confronted with two cheques which the plaintiff had produced to prove payment of commission to him by the defendant-appellant the latter said that they were payments of rent, both before and after that in the course of his evidence he denied tenancy and payment of rent to the plaintiff-respondent. Further the plaintiff-respondent has averred in his plaint and has proved and the learned Commissioner has held that the defendant was in arrears of rent from October 1960. The arrears of rent due was a sum of Rs. 2,669.34 but the plaintiff-respondent restricted his claim to a sum of Rs. 700 in order that he might bring this action in the Court of Requests. In the circumstances, I do not think that there is sufficient ground for interfering with the quantum of arrears of rent awarded in the decree.

The appeal is dismissed with costs.

Appeal dismissed.

¹ (1955) 1 N. L. R. 21.

² (1934) 36 N. L. R. 400.

³ (1959) 62 N. L. R. 471.