1971 *Present :* **Weeramantry, J.**

J. E. BRITTO, Appellant, *and* A. S. SWAMIKANNU and 4 others, Respondents

S. C. 102/68—C. R. Colombo, 92368

Rent Restriction Act—Subletting—Requisites of exclusive occupation and ascertainable rent—Whether sharing of certain common areas of accommodation negatives subletting—Definiteness of rent—Proof.

Where defined areas or rooms of a rented house are sublet by the tenant to different families and each such family is in exclusive occupation of the area sublet to it, a sharing by the families of the kitchen, a small common hall and the bathroom facilities of the house does not negative the subletting.

Where the rent payable by different sub-tenants can be calculated at any point of time by a definite method, the requirement of definiteness of rent which is essential to constitute a contract of letting under the Roman-Dutch law is satisfied.

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

Plaintiff sought ejectment of the five defendants on the basis that the first defendant had sublet the premises in suit to the other defendants. The evidence showed that the premises, which consisted of two rooms and two halls, had been partitioned with hardboard so as to form altogether six rooms. Five of these rooms were admittedly in the exclusive occupation of families other than the first defendant's, although the plaintiff was unable to specify the particular rooms occupied by particular families.

The position taken up on behalf of the defendants was that the thirty or more individuals who lived in the premises formed a group or "chummery" who lived together in the house, each family taking a turn at the monthly cooking for the entire group. They also shared a small common hall and common bathroom facilities. Each family paid a

proportion of the rent depending on the number of "adults" it contained. A number of children between certain ages below 10 years, and all children above the age of 10 years, were reckoned as adults.

H. W. Jayewardene, Q.C., with *V. Arulambalam* and *G. M. S. Samaraweera*, for the plaintiff-appellant.

C. Ranganathen, Q.C., with *K. Shanmugam*, for the 1st defendant-respondent.

V. Thillainathan, with *D. J. Tampoe*, for the 2nd to 4th defendants-respondents.

Cur. adv. vult.

January 16, 1971. WEERAMANTRY, J.—

The plaintiff in this case seeks the ejectment of five defendants on the basis that the first defendant has sublet the premises in suit to the other defendants.

These premises were a part of a larger house which belongs to the plaintiff's vendor, and would appear to have consisted of two rooms and two halls of that larger house.

The plaintiff's position was that at the time of his purchase only the first defendant and his brother were in occupation of the premises as far as the plaintiff was aware. After his purchase however he came to know that the first defendant had sublet these premises. On a subsequent inspection of the premises, he found that they had been partitioned with hardboard so as to form six rooms inclusive of the two halls—that is to say, of the four units of accommodation that had been there earlier, two had been sub-divided, so that there were now six.

It would appear from the householder's lists, and this fact is not disputed, that at the time of institution of action more than 30 people, comprising several families, were in occupation of these six rooms. It is the plaintiff's position that they have all come in, pursuant to various acts of sub-letting by the first defendant. It is clear from the householder's lists that the persons in occupation were members of different and distinct families and that some of these families comprised as many as six or seven individuals each.

The position taken up on behalf of the defendants was a curious one, namely, that the thirty or more individuals who lived in these premises formed a group who lived together in the house, each family taking a turn at the monthly cooking for the entire group. The expenses were shared proportionately. Rent was also one of the items of expenditure in respect of which the members of this group, somewhat quaintly described by the first defendant in evidence as a chummery, made a contribution to the common pool.

The rent due from each family was calculated according to the first defendant again on a most interesting and unusual basis—namely that

five children between the ages of 3 and 5 were reckoned as one adult, three children between the ages of 5 and 10 years were reckoned as one adult, and all children above the age of 10 years were reckoned as adults. Each family paid a proportion of the rent depending on the number of "adults" it contained.

As far as sleeping accommodation was concerned, the first defendant stated that the occupants of the house had no fixed places and his evidence at one point was that "we sleep all over the house".

It was further stated by the first defendant that there was a common hall where all the occupants sit and talk, that all use the same kitchen and that there is no separate place in the house set apart for the occupation of any particular inmates. On the other hand he has stated also that there is sleeping accommodation in all six rooms and that each of these rooms has a door which can be locked. Out of the six rooms, five are occupied by the respective families living there.

The learned judge has observed that although the plaintiff has spoken to the occupation of the premises by various persons he has not stated what particular rooms are occupied by the 2nd to the 5th defendants. He has also noted that the plaintiff has failed to prove that a fixed amount is paid by way of rent to the landlord by each of the alleged sub-tenants. On this basis he has held that the plaintiff has failed to prove sub-letting and he has dismissed the plaintiff's action with costs.

In appeal it is contended on behalf of the appellant that the tests of exclusive occupation and ascertained or ascertainable rent are both satisfied in the present case and that there is in the circumstances a subletting in law by the first defendant to the other defendants.

By way of reply to this contention the respondent has urged the further point that in any event the sharing of the common hall and the common kitchen not to speak of common bathroom facilities is also a factor that militates against sub-letting.

I shall deal first with the contention that there is no defined area and in association with that question I shall examine the submission that the sharing of common areas of accommodation negatives subletting. I shall thereafter consider the contention that there is no definite rent.

I am not impressed by the evidence of the first respondent that the occupants "sleep all over the house". A perusal of the householder's lists would indicate that there are persons of all ages in these families and I do not for a moment believe that this group of more than thirty men, women and children sleep indiscriminately in various parts of the house. It is quite clear that the rooms which can be separately locked are those which each family has come to look upon as the sleeping quarters allotted exclusively to itself. Of course the adult males of each family would sleep outside their rooms if there is insufficient accommodation within, but this is not for lack of a defined area exclusively occupied by each family. Indeed at one stage of the evidence the first defendant was

constrained to admit that the males sleep in the verandah and the females sleep inside the house, and the children with their mothers.

For the same reason the evidence that the premises were being run as a "chummery" is altogether unacceptable, if the idea sought to be conveyed is that all these persons of both sexes and of all ages were living together sharing common accommodation as is done in what is popularly understood to be a "chummery". I do not agree with the learned judge when he holds that the occupancy of the premises on the basis of a "chummery" must be preferred to the plaintiff's allegation of sub-tenancy.

The next submission to be considered is the respondent's contention that the use of the common hall and the common kitchen constituted important additions to the right given to the tenant which made the transaction substantially one other than a transaction of letting the room.

Having regard to the fact that the portion used in common is nothing other than one of the small divisions of six rooms into which the premises were divided and having regard also to the fact that each family occupies the kitchen only for a period of one month every five months, I do not think the use of the so-called hall and the kitchen are of sufficient importance to enable this Court to take the view that the substantial subject matter of the contract of letting is anything other than the room which each family occupied. The use of the hall and the kitchen were merely adjuncts of the particular subject matter of the letting, namely a room which each family was able to occupy dividedly and exclusively.

On behalf of the respondents I have been referred to certain English decisions where a sharing of the kitchen has been looked upon as indicative of a sharing of the entire house, as distinguished from the tenancy of a portion. Thus in *Kenyon v. Walker*[1] the tenant had allowed another person the exclusive use of certain rooms of the house together with the use in common of a box room, bathroom and toilet. The tenant asserted that there was no subletting and that the Rent Restriction Acts did not apply since this was only an arrangement to share the house and did not amount to a letting of a separate dwelling. The judgment drew a distinction between the use of such amenities as bathrooms and box rooms which were considered purely ancillary to the contract of letting, and the use of a kitchen, which was considered to indicate a sharing of the entire house. So also in *Cole v. Harris*[2] Mackinnon, L.J. in a passage cited with approval in *Kenyon v. Walker*[3] observed "There is a letting of a part of a house as a separate dwelling within the meaning of the relevant Acts if, and only if, the accommodation which is shared with others does not comprise any of the rooms which may fairly be described as 'living rooms' or 'dwelling rooms'. To my mind a kitchen is fairly described as a living room where the occupants spend the greater part of the day".

[1] *(1946) 2 All E. R. 595.* [2] *(1945) 2 All E. R. 146 at 152.*
[3] *(1946) 2 All E. R. 595 at 598.*

On the basis of such decisions Mr. Renganathan has submitted that the evidence that the families took monthly turns in doing the cooking was indicative of a sharing of a common kitchen and was strong evidence against subletting.

In the first place I think a distinction must be drawn between the kitchen of an English household and the kitchen of a household in this country. For climatic and other reasons a kitchen in England is something more than merely a place where cooking is done, for as has been pointed out in the very judgments referred to, a kitchen is a social centre for the entire house where the occupants meet and to which they tend to drift for the warmth and the comfort which it offers. It is therefore an important common room of the building—and this cannot be said of the average kitchen in this country.

Moreover the English cases to which the respondents have made reference are in fact cases decided against a somewhat different statutory background where the question is not whether a distinct portion of the building has been sublet but whether it has been let as a separate *dwelling*.

The English cases are therefore not directly helpful on the question whether there is a subletting or not.

However even if value is to attach to English cases as a source of guidance to us in construing our Statute, there is a later decision of the House of Lords in *Baker v. Turner*[1] where Lord Porter expressed the view that a tenant who sublets a portion of the house he occupies and gives a right to his tenant to use the kitchen, may not in fact share his kitchen and that he may retain many rights which the sub-tenant does not enjoy. For example the tenant continues to have general control of the kitchen subject only to the rights he has granted, while the sub-tenant has nothing but the rights which his landlord has given.

For these reasons I do not think that the sharing of the kitchen in the present case is an indication against subletting as Mr. Renganathan sought to argue. Further, in regard to the common use of the bathroom, this is no indication one way or the other. Even those English cases such as *Kenyon v. Walker* which accorded a special position of importance to the kitchen made it quite plain that the common use of bathrooms and lavatories is on an entirely different footing and does not militate against the notion of a separate letting.

Reference was also made at the argument to a line of Ceylon authorities indicating that it is essential to a subletting that there should be a defined area sublet. This line of cases starts with the judgment of Gratiaen J. in *Suppiah Pillai v. Muttukaruppa Pillai*[2] wherein the principles of common law were invoked in order to determine whether there has been a subletting, one of these principles being that the thing hired should be capable of ascertainment as an identifiable entity occupied by the sub-tenant to the exclusion of the tenant. On this basis Gratiaen J.

[1] *(1950) 1 All E. R. 834.*

[2] *(1953) 54 N. L. R. 572.*

held that no breach of the provisions of the Act is committed if a tenant while himself remaining in occupation of the leased premises merely permits someone else to share his use and enjoyment with him. He held further that the essential test in every case is whether there is evidence from which one can infer that there is at least some part of the premises over which the tenant has by agreement placed the sub-tenant in exclusive occupation. This judgment has been followed in several cases thereafter of which it will suffice to mention the judgment of Wijayatilake, J. in *John Singho v. Mariam Beebie*[1] wherein the authorities are summarised and the same test is repeated.

In the present case there is no doubt that some rooms are now in the exclusive occupation of particular families. The landlord is of course unable to state which particular family occupies any particular room, but on the first defendant's own evidence it seems clear that at least five of the rooms are in the exclusive occupation of families other than his own. To this extent there is compliance with this requirement of exclusive possession of some part of the premises by the alleged sub-tenants. In a case such as this it is quite impossible for a landlord to state more than he has done. The details of occupation are a matter specially within the knowledge of the tenant and are in the circumstances almost impossible for the landlord to ascertain. I do not think it can fairly be urged as a circumstance against the landlord that he is unable to specify the particular rooms occupied by particular families.

For all these reasons I do not think that the circumstances revealed in evidence in the present case militate in any way against the principles laid down by our courts indicating the necessity for exclusive possession of a defined area as a requisite to the proof of subletting. This test is satisfied by the exclusive use of the various rooms referred to by the respective families concerned; and the sharing of the kitchen or other portions of the premises in no way derogates from the character of subletting which attaches to the transaction between the first defendant and the other defendants.

Coming now to the other question, namely the requirement of a fixed and defined rent, Mr. Jayewardene has submitted that while it is true that the first defendant's evidence does not reveal a fixed quantum of rent it certainly reveals a definite method of calculating the rent. There is a formula to which I have already referred which determines the proportionate rent payable by the respective tenants and the rent is thus at any point of time ascertainable. It may vary from time to time. The rent of a paddy field may be fixed in terms of a one-fifth share of the produce from the field, and though the rent would thus vary from season to season, there would be a definite method available for its assessment, and the requirement of an ascertained or ascertainable rent would thus be satisfied [2].

[1] *(1969) 75 C. L. W. 107.*

[2] *See Pothier, Letting, s. 37*

Though the method for computing the rent is unusual and cumbersome, upon the evidence of the first defendant himself, the rent would be known the moment the number of occupants of the respective families is known and it would thus be a factor determinable with precision at any point of time.

I do not agree therefore that there is a lack of that definiteness in rent which is essential to constitute a contract of letting under the Roman-Dutch Law.

I therefore conclude that in the circumstances of the present case there is a subletting by the first defendant to the other defendants and I arrive at this conclusion upon the basis of the law as understood and applied in our courts hitherto.

I would also like to make a further observation that the court should hesitate to construe a situation in such a manner that the result would be to permit persons so minded to drive a coach and six through the Ordinance and flout the self-evident object of the Legislature. The result of the interpretation sought to be placed on the facts by the respondents would be to permit with impunity the letting of portions of premises to a score of persons who are strangers to the landlord. when the Legislature forbids a letting even to one.

It is useful to draw attention to the importance of taking a realistic view of the Statute rather than a view which by too much reliance on technicality may defeat the very mischief which the Statute was designed to prevent.

For these reasons I think the learned judge erred when he took the view that the plaintiff had failed to prove the requisites of a subletting and dismissed the plaintiff's action with costs. I would reverse the judgment of the learned trial judge and enter judgment for the plaintiff as prayed for with costs both here and in the court below.

Appeal allowed.