

1965

Present : Sansoni, C.J., and Sirimane, J.

GIFFRY, Appellant, and DE SILVA, Respondent

S. C. 139/64—D. C. Panadura, 8121

Rent Restriction Act—Destruction of leased premises— Termination of tenancy— Effect of tenant's handing over the leased premises to the landlord—Contract of tenancy—Failure of landlord to give possession of premises to tenant—Remedy of tenant.

Where a building which is the subject of a lease is burnt down without the fault of the landlord or the tenant, the tenancy comes to an end even if it fell within the Rent Restriction Act.

One way in which the statutory protection given by the Rent Restriction Act to a tenant comes to an end is by the handing back of the premises to the landlord.

Where, after a contract of tenancy is entered into, the landlord fails to give possession of the premises to the tenant, the tenant is not entitled to take forcible possession of the premises. His only remedy is an action for damages.

APPPEAL from a judgment of the District Court, Panadura.

H. W. Jayewardene, Q.C., with *M. T. M. Sivardeen* and *D. S. Wijewardene*, for Defendant-Appellant.

C. Thiagalasingam, Q.C., with *Nihal Jayawickrema*, for Plaintiff-Respondent.

Cur. adv. vult.

October 8, 1965. SANSONI, C.J.—

The defendant gave premises No. 360, Main Street, Panadura, on rent to the plaintiff, who occupied them for some time prior to 4th August, 1961. On that night, a fire broke out in these premises, and the plaintiff vacated them in consequence of the damage done by the fire. The defendant put up a new building there, and when it was almost ready for occupation the plaintiff took possession of it. The defendant complained to the Police and the plaintiff was prosecuted in consequence of such entry by him.

This action has been brought by the plaintiff for a declaration that he is a tenant of the premises, and entitled to remain there and to exercise all the rights of a statutory tenant.

The defendant in his answer denied that the plaintiff is his tenant. He stated that the plaintiff is in forcible and unlawful occupation of the premises, and he asked for ejection and for damages. After trial, the learned District Judge gave judgment in favour of the plaintiff and the defendant has appealed.

The first matter for consideration is the effect that the fire had upon the contract of tenancy. The learned Judge found that the frontage, which consisted of a framework of planks, and also one side of the premises which consisted only of a row of almirahs, were completely destroyed by the fire: so was the main roof of the building. The walls on the two other sides remained standing, and so did a room at the rear of the building. That room, however, on the plaintiff's own evidence, was not in his occupation at the time of the fire, but had been rented by the defendant to a third party.

It is clear that after the fire there was nothing that the plaintiff could occupy as a building, and that is why he vacated the premises. The learned Judge correctly found that the building could not be used either for purposes of habitation or business. Thus the subject matter of the lease, which was the building, had been completely destroyed, because there was nothing left except two walls. The law is clear that where a building which is the subject of a lease is burnt down without the fault of the landlord or of the tenant, as was the case here, the contract is at an end, for the subject matter of the contract is also at an end. By the contract the tenant is entitled to the use and occupation of the building, and if there is no building to use and occupy, there is no existing contract—see *Wille, Landlord and Tenant in South Africa*, (5th Edition) page 255.

It is common ground that the tenancy was one which fell within the Rent Restriction Act, but that makes no difference. The statutory tenancy was in respect of the building, and when the building perished the statutory tenancy also ceased to exist.

I do not think that the law in Ceylon is different from the English law in this respect. In neither country can there be a statutory tenancy in respect of bare land. I think the statement in Mr. R. E. Megarry's book on *The Rent Acts* (8th Edition) that "the restrictions of the Acts do not inhere in the land after the demolition of the dwelling-house, but remain only so long as it is there", which was approved by Evershed M. R. in *Morleys (Birmingham) Ltd. v. Slater*¹, is applicable to Ceylon.

Apart from these considerations, it is proved by the evidence that after the fire the plaintiff vacated these premises, and gave up possession to the defendant. That is how the defendant came to build a new house in place of the old one which had been destroyed. The legal effect of the plaintiff handing over possession to the defendant was that the tenancy was terminated, and along with it the statutory protection of the plaintiff came to an end. This has been decided by this Court in *Ibrahim Saïbo v. Mansoor*². One way in which the statutory protection given by the Rent Restriction Act to a tenant comes to an end is by the handing back of the premises to the landlord.

Mr. Thiagalingam relied on a promise said to have been made by the defendant to the plaintiff about two days after the fire, that he would repair the building and give it back to the plaintiff. Even if this is true,

¹ (1950) 1 K. B. 506.

² (1953) 54 N. L. R. 217.

it amounts to nothing more than an agreement by the defendant to let the premises again to the plaintiff. For the breach of such an agreement the only remedy is an action for damages. It certainly does not entitle the plaintiff to take forcible possession of the building, as he appears to have done in this case.

The plaintiff's occupation from the time he went back into possession of the building is therefore wrongful, and he must be ejected. He must also pay damages for his wrongful possession, and as he has stated that the statutory rent is Rs. 58·85 a month this would be the measure of damages.

I would set aside the judgment of the learned Judge and dismiss the plaintiff's action. The defendant is entitled to a decree of ejectment against the plaintiff, and to damages at Rs. 58·85 a month from 16th December 1961 until he is restored possession. The plaintiff will also pay the defendant's costs in both Courts.

SIRIMANE, J.—I agree.

Appeal allowed.

