1956 *Present*: **Gunasekara, J., and T. S. Fernando, J.**

BANDARA MENIKA and another, Appellants, *and*
K. V. G. DE SILVA, Respondent

S. C. 346—D. C. Kandy, 5,667 M. R.

Rent Restriction Act—Excess rent—Action for recovery—Prescription—Computation of prescriptive period.

Where money is paid by a tenant in excess of the authorised rent, a cause of action accrues to him immediately on the payment of the money. Therefore, the remedy of recovery of the excess sum becomes prescribed after a period of three years from the date of payment of that sum.

Wijesekera v. Kanapathipillai (1954) 55 N. L. R. 575 and *Munidasa v. Richard Appuhamy* (1955) 57 N. L. R. 108, distinguished.

APPEAL from a judgment of the District Court, Kandy.

H. W. Jayewardene, Q. C., with *C. D. S. Siriwardene* and *P. Ranasinghe*, for the defendants-appellants.

Sir Lalita Rajapakse, Q. C., with *W. D. Gunasekera*, for the plaintiff-respondent.

Cur. adv. vult.

December 6, 1956. T. S. FERNANDO, J.—

The plaintiff instituted this action on 5th May 1954 against the defendants, his lessors, for recovery of a sum of Rs. 2,667·95 which he alleged had been received by them in excess of the authorised rent of certain premises leased out to him. It would appear that by an indenture of lease entered into between the parties on 23rd October 1945 the defendants leased to the plaintiff the premises referred to above for a period of ten years commencing on 1st January 1946 on the plaintiff paying them a sum of Rs. 9,000 by way of rent for the full term of ten years, the sum being arrived at on the basis of a rental of Rs. 900 per annum. The full sum of Rs. 9,000 was paid to the defendants at the time of the execution of the lease, viz., on 23rd October 1945.

It is not disputed that the authorised rent of the premises for each of the years commencing from 1946 was less than Rs. 900. The aggregate of the authorised rent for the premises for the ten years 1946 to 1955 was alleged by the plaintiff to be Rs. 6,322·05, but it is interesting to note that in computing this aggregate sum the plaintiff has on 5th May 1954 (the date of the institution of this action) assumed that the authorised rent for the following year 1955 will be the same amount as for 1954. The defendants, while not disputing the correctness of the quantum of the authorised rent relied on a plea of prescription to defeat the plaintiff's claim. The learned District Judge, holding that the difference between the rent paid (Rs. 2,700) and the authorised rent (Rs. 1,935·80) for the three years prior to the institution of the action was recoverable, has awarded judgment in favour of the plaintiff for a sum of Rs. 764·20 with costs in that class.

The learned judge has stated that, as the authorised rent for the entire period of the lease was not ascertainable at the time the lease was executed and as the authorised rent for any premises in respect of any particular year can be ascertained only after the local authority has made its annual assessment of the premises, the cause of action that accrued to the plaintiff at the date of the execution of the lease was a claim for recovery of the amount he had paid to the defendants in excess of the authorised rent for the year 1946. He has added that in every year of assessment a cause of action arose to the plaintiff to claim the excess paid over the authorised rent for that particular year. It was for these reasons that he held that the excess paid over the authorised rent for the three years prior to the

institution of the action was recoverable, a claim for the recovery of the excess paid in respect of the period anterior to these three years being barred by the provisions of the Prescription Ordinance. I am of opinion that the line of reasoning followed by the learned judge in adjudicating on the issue of prescription in this case is not correct. The first question that arose in my opinion was whether the rent was recovered or received at the time the parties entered into the contract, i.e. on 23rd October 1945. If the rent was recovered or received, as undoubtedly it was, and was in excess of the authorised rent, then in my opinion a cause of action to recover the whole of the excess sum accrued to the plaintiff immediately on the payment of the money on 23rd October 1955. As this action was filed only on 5th May 1954, more than eight and a half years after the payment, it is clearly barred by the provisions of the Prescription Ordinance. The fact that the authorised rent for the several years covered by the lease was not ascertainable with precision until the assessments for those years by the local authority were complete did not stand in the way of the plaintiff maintaining an action for the recovery of the excess rent as computed on the 1945 basis.

Learned counsel for the plaintiff relied on section 15 of the Rent Restriction Act, No. 29 of 1948, in support of his contention that the plaintiff is entitled to recover the excess rent paid for a period of three years prior to the date of this action, and has referred us to the decisions of this Court in *Wijesekera v. Kanapathipillai* [1] and *Munidasa v. Richard Appuhamy* [2]. These decisions however relate to the question of the appropriation of overpayments of rent where a tenant was sought to be ejected by the landlord on an allegation that the tenant was in arrears of rent and have no application to a case like the present one where the tenant is suing for the recovery of an amount alleged to have been paid in excess of the rent due. It is sufficient to point out that in *Wijesekere v. Kanapathipillai* (supra), Pulle J. stated that the remedy of recovery of excess rent was not available after a period of three years *from the date of payment of the excess amount.* In the present case it is impossible to deny that the date of payment of the excess amount was 23rd October 1945.

The defendant's plea of prescription is entitled to prevail, and the appeal must be allowed and the plaintiff's action dismissed with costs in both courts.

GUNASEKARA, J.—I agree.

Appeal allowed.

[1] *(1954) 55 N. L. R. 575.*

[2] *(1955) 57 N. L. R. 108.*