

1962 Present : Abeyesundere, J., and G. P. A. Silva, J.

IZADEEN MOHAMED, Appellant, and SINGER SEWING
MACHINE CO., Respondent

S. C. 390/60—D. C. Kandy, 5662/L

Landlord and tenant—Sale, by landlord, of premises let—Failure of purchaser to give notice of election to tenant—Effect.

Where any premises are sold by a landlord while a tenant is in occupation thereof, the purchaser can either insist on the vendor giving him vacant possession or, with notice to the tenant in occupation of the premises, elect to take the premises with that tenant. If the purchaser fails to give notice of election to the tenant, the contract of tenancy between the vendor and the tenant subsists and it is only the vendor who is competent to terminate that contract of tenancy.

APPPEAL from a judgment of the District Court, Kandy.

H. V. Perera, Q.C., with *N. Nadarasa* and *H. D. Tambiah*, for the plaintiff-appellant.

C. Ranganathan, with *D. P. M. Fernando*, for the defendant-respondent.

September 13, 1962. ABEYESUNDERE, J.—

The plaintiff-appellant sued the defendant-respondent for the purpose of ejecting him from premises No. 91, Trincomalie Street, Kandy. The basis of the action was that there was a contract of tenancy between the plaintiff-appellant and the defendant-respondent, that the defendant-respondent was in arrears with regard to the rent for November and December, 1957, and January and February, 1958, for over one month after the rent became due, and that the tenancy was terminated by notice to quit (P 3) dated 4th March, 1958. The plea of the defendant-respondent was that there was no contract of tenancy between him and the plaintiff-appellant who had purchased the premises in suit from the previous owner from whom the defendant-respondent had obtained the tenancy.

Where any premises are sold while a tenant is in occupation thereof, two courses of action are in law open to the purchaser. He could either insist on the vendor giving him vacant possession of the premises or with notice to the tenant in occupation of the premises elect to take the premises with that tenant. If the purchaser fails to elect to take the premises with the vendor's tenant in occupation thereof, the contract of tenancy between the vendor and the tenant subsists and it is only the vendor who is competent to terminate that contract of tenancy. This view of the law finds support in the decision of the Supreme Court in the case

of *Wijesinghe v. Charles* reported in 18 N. L. R., page 168, and that decision has been followed in the case reported in 23 N. L. R., page 476, and has been approved by Gratiaen, J. in the case reported in 52 N. L. R., page 433, at page 445.

The premises in suit originally belonged to Madar Saibo Mohamed Hassan and he by deed P1 of 16th October, 1957, sold the premises to his son-in-law, the plaintiff-appellant. At the time of the sale the defendant-respondent was in occupation of the premises as the tenant of the vendor. The change of ownership was notified to the defendant-respondent by letter P2 dated 24th December, 1957, sent by the vendor's Proctors, Messrs Liesching and Lee. There was however no indication whatsoever by the plaintiff-appellant that he had elected to take the premises with the vendor's tenant in occupation thereof. The result in law was that the contract of tenancy between the vendor and the defendant-respondent continued to subsist. Consequently the plea of the defendant-respondent that there was no contract of tenancy between him and the plaintiff-appellant must succeed. I therefore dismiss the appeal with costs.

G. P. A. SILVA, J.—I agree.

Appeal dismissed.

