

1964

*Present : Alles, J.*

R. R. FERNANDO, Appellant, and M. VADIVELU, Respondent

*S.C. 49/1964—C.R. Colombo, 84446**Rent Restriction Act—Inapplicability to land with a building appurtenant to it—  
Meaning of term "premises".*

The provisions of the Rent Restriction Act are not applicable to a lease of bare land with a building appurtenant to it.

**A**PPPEAL from a judgment of the Court of Requests, Colombo.

*S. Sharvananda*, for plaintiff-appellant.

No appearance for defendant-respondent.

*Cur. adv. vult.*

September 21, 1964. ALLES, J.—

In this case the plaintiff sued the defendant for ejectment from the premises described in paragraph 2 of the plaint and recovery of rent alleged to be in arrear and damages for overholding. At the conclusion of the argument, I allowed the appeal and said I would give my reasons later. In his plaint, the plaintiff described the premises let as "a divided portion in extent about half an acre sixteen perches out of the land called Merakaduruwatte alias Mahawatte situated within the Urban Council limits of Wattala together with the hut standing thereon bearing assessment No. 145/10 . . . .". The plaintiff also averred in paragraph 6, that the premises in suit are not governed by the provisions of the Rent Restriction Act being a bare land in extent over half an acre with a small hut standing thereon and appurtenant thereto.

The evidence of the plaintiff, which has been accepted by the learned Commissioner, is to the effect that one Shanmugavel who was the original tenant of the premises in suit erected a cadjan hut on the land and received Rs. 45/- as compensation from the plaintiff on document P 1 on the termination of his tenancy. Thereafter, the plaintiff let to the present defendant the grass-land with the hut thereon and the defendant lived

in that hut and cut grass. About four years later, the plaintiff rebuilt the hut and improved it. These improvements cost him about Rs. 450/-. The learned Commissioner accepts the position that what was first rented out to the defendant was a grass-land with the hut thereon and that the Rent Restriction Act did not apply to these premises. Relying however, on a certified extract of the Assessment Register for the premises in suit for the years 1959-1962, in which an assessment number was given to the rebuilt hut, he comes to the conclusion that as the hut bore an assessment number from 1959, the provisions of the Rent Restriction Act applied to the premises from 1959. I am unable to understand on what basis the assessment of any premises can convert them from premises to which the Rent Restriction Act does apply, to premises to which they do not. The original premises let to the defendant also bore an assessment number. The word 'premises' has been defined in the Rent Restriction (Amendment) Act as 'any building or part of a building together with the land appertaining thereto'. The only question therefore, that arises for consideration in this case is whether what was let to the defendant were premises which consisted of a building with appurtenant land or land with an appurtenant building. This is a question of fact and the learned Commissioner has accepted the position that originally the hut was appurtenant to the land. In my view, the rebuilding of that hut makes no difference to that position. Relying therefore, on the tests applied by Gunsekara, J. in *Paul v. Geverappa Reddiar*<sup>1</sup> and Sinnetamby, J. in the case of *Nallathamby v. Leitan*<sup>2</sup> I would hold that what was let to the defendant was the grass-land with the appurtenant building and therefore the Rent Restriction Act does not apply to these premises. Since I have held in favour of the plaintiff-appellant on the preliminary question, it is unnecessary for me to decide the further question whether the learned Commissioner came to a correct decision regarding the arrears of rent. The order of the learned Commissioner is therefore set aside. The appeal is allowed. There will be no costs of the Court below, but the plaintiff-appellant will be entitled to the costs of this appeal.

*Appeal allowed.*

<sup>1</sup> (1958) 59 N. L. R. 402 at 404.

<sup>2</sup> (1956) 58 N. L. R. 56.