1968 *Present:* **Sirimane, J.**

BERTHA WALLES, Appellant, *and* D. V. HECTOR SILVA, Respondent

S. C. 7/67—C. R. Colombo, 90549

Rent-controlled premises—Sub-letting—Sale of premises thereafter by landlord—Purchaser has no right to eject the tenant on the ground of the prior sub-letting—Action which is null and void ab initio*—Subsequent amendment of plaint to include a valid claim—Effect—Rent Restriction Act (Cap. 274), s. 9 (1) (2)—Rent Restriction (Amendment) Act, No. 12 of 1966, ss. 2, 4 (1)—Civil Procedure Code, s. 93—Sub-letting—Quantum of evidence.*

Where a tenant sublets rent-controlled premises without the permission of his landlord, a person who subsequently purchases the premises from the landlord is not entitled to eject the tenant on the ground of the sub-letting which had been done when he was not the landlord.

Ratnasingham v. Cathirasaswamy (58 N. L. R. 476) not followed.

An action which is declared by law to be null and void *ab initio* cannot be given validity by a subsequent amendment of the plaint so as to include a valid claim. Accordingly, where, prior to the date when the Rent Restriction (Amendment) Act No. 12 of 1966 came into operation, a landlord instituted action for ejectment of his tenant on the ground that the rented premises were reasonably required for his own use, he is not entitled to give validity to the action after the amending Act was passed, by amendment of the plaint alleging that the defendant had sublet the premises.

A landlord who seeks to show that his tenant had sublet part of the rented premises must establish that the alleged sub-tenant had exclusive occupation of an identifiable entity to the exclusion of the tenant.

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

H. V. Perera, Q.C., with *M. L. de Silva*, for the defendant-appellant.

C. Ranganathan, Q.C., with *B. Bodinagoda*, for the plaintiff-respondent.

Cur. adv. vult.

January 17, 1968. SIRIMANE, J.—

The plaintiff purchased the premises in question in December 1964. At the time of his purchase the defendant was the tenant of these premises, and in fact had been in occupation as a tenant for about twenty-four years before the plaintiff's purchase. On 19.4.65 the plaintiff filed action for ejectment on the ground that the premises were reasonably required by him for his occupation.

About a year later (on 7.5.66) the plaintiff moved to amend the plaint alleging that the defendant had sublet the premises to one " Kulendran and/or Shanmugam and/or Mrs. Madawela and/or Miss Rasiah " without specifying the dates of the alleged sub-letting. This amendment had been allowed, and an amended plaint was filed on 23.5.66.

In the meantime the Rent Restriction (Amendment) Act, No. 12 of 1966 (hereinafter referred to as the Amending Act), was passed on 10.5.66, according to the provisions of which " reasonable requirement " by the landlord was no longer a ground for ejectment of the tenant. The defendant's position was that certain other people who occupied the premises with her were her boarders and not sub-tenants.

The Commissioner accepted the evidence that Miss Rasiah had been a sub-tenant of the defendant from September 1964 to April 1965, and granted the plaintiff a decree for ejectment on that ground. This finding of fact was strongly assailed and it was urged that Miss Rasiah (a Pharmacist) was a convenient witness found by the plaintiff (a doctor) to supply a deficiency at a late stage in the case.

Assuming, however, that the finding of fact is correct, one sees that the sub-letting had been done *before* the plaintiff's purchase. Section 9 (1) of the Rent Restriction Act, Chapter 274, provides that the tenant of any premises to which the Act applies shall not sublet without the prior consent in writing of the landlord. Sub-section 2 of that section then goes on to say, " where any premises or any part thereof *is sublet* in contravention of the provisions of sub-section (1) *the landlord* shall.....be entitled.....to a decree for ejectment.....of his tenant, and.....of the persons to whom the premises or any part thereof has been so sublet ".

When does the right to a decree for ejectment under this section arise ? It arises on the subletting. A sub-tenancy continues from month to month ; but the subletting is done on a particular day, and it is this act of subletting that gives rise to the right.

To whom does the right accrue ? In my opinion it accrues to *the landlord* at the time of the sub-letting.

When a sale takes place the purchaser no doubt steps into the shoes of the seller as a singular successor to title, and, on the principle that hire goes before sale, a tenancy or a sub-tenancy will continue with the purchaser as the new landlord.

But, rights of action which have accrued for *breaches* of the contract of tenancy do not pass to the purchaser unless there is an assignment of those rights. If, for example, a tenant has defaulted in payment of rent when A was his landlord ; and A thereafter sells the premises to B, then

the purchaser B cannot sue the tenant for ejectment on the ground that he has been in arrears of rent. Voet says (book 19, title 2, section 19, Gane's translation, page 428) :

> " On the other hand also whenever by statute or custom sale gives place to lease a particular successor is only bound to bear up to the end with a resident in occupation or a tenant in enjoyment if the lessee is ready to pay the rents to him *for the ensuing period.*"

Similarly, if a tenant has sublet premises without the permission of the landlord a purchaser cannot eject the tenant on that sub-letting, particularly so, if the sub-tenancy has terminated at the time he comes into Court.

I am unable to accept the argument of learned Counsel for the respondent that once a tenant sublets in contravention of section 9 of the Rent Restriction Act he renders himself liable for ejectment not only by the landlord at that time, but by any of his successors in title. According to this argument if a tenant sublets premises without permission from his landlord even for a month, then a subsequent purchaser can sue the tenant for his past act of sub-letting even though there are no sub-tenants at the time he brings his action. Section 9 (1) of the Rent Restriction Act is not a punitive section and the right to a decree for ejectment does not in the context of that section accrue to a person other than the landlord at the time of the subletting.

My attention was drawn to the case of *Ratnasigham v. Cathirasasamy*[1], where a contrary view has been expressed. The learned Judges who decided that case were of the view that the definition of the word " landlord " in the Rent Restriction Act as " the person for the time being entitled to receive the rent ", enabled any landlord of the premises at any time after the subletting to sue for a decree for ejectment. With great respect, I am unable to share this view. The definition of the word " landlord " is of little assistance in construing the true meaning of the section. The real question is whether a person for the time being entitled to collect rent is entitled to sue for a decree for ejectment on the ground of a subletting which had been done when he was not the person entitled to collect rent.

The appeal must succeed on this ground even assuming that Miss Rasiah's evidence that there was a subletting is correct.

I pass on to the second ground urged in the appeal.

It is admitted that the standard rent of the premises is below Rs. 100 per month. In the case of such premises section 2 of the Amending Act provides that no action or proceeding for the ejectment of the tenant shall be instituted in or entertained by any Court except on four grounds, *viz.*—

(*a*) Rent being in arrears for three months or more,

(*b*) Subletting without the landlord's written consent,

(*c*) The premises being used for an immoral or an illegal purpose, and

(*d*) Wanton destruction or wilful damage being caused to the premises.

[1] *(1956) 58 N. L. R. 476.*

Section 4 (1) makes these provisions effective retrospectively from 20.7.62 and proceeds to enact that—

> " accordingly any action which was instituted on or after that date and before the date of commencement of this Act for the ejectment of a tenant from any premises to which the principal Act as amended by this Act applies shall, if such action is pending on the date of commencement of this Act, be deemed at all times to have been and to be null and void."

For the purpose of giving it retrospective effect one has to assume that this section was in operation on 19.4.65 when this action was instituted on the ground that the premises were reasonably required by the landlord. So that the action must " be deemed at all times to have been and to be null and void ". No doubt, an amendment does, for certain purposes (e.g. for purposes of prescription), relate back to the date of the plaint. But an application to amend pleadings is a step (under section 93 of the Civil Procedure Code) in a valid action pending before a Court. An action which is declared to be null and void *ab initio* cannot, by an amendment, be given validity.

The appeal must succeed on this ground too. Lastly, there is the question of fact.

Miss Rasiah's evidence has to be viewed with the utmost care and circumspection. She did say that she paid Rs. 75 per month and occupied a certain part of the house. This evidence was flatly contradicted by the defendant who said that Miss Rasiah was a boarder brought in by her mother whom the defendant had known earlier. The mere fact that a door leading to the rooms they occupied had been closed does not necessarily negative the fact that they could have been boarders ; nor even the fact that they had been seen doing some cooking—(assuming that this evidence is true). It would be an unsafe inference to draw from Miss Rasiah's evidence that she had exclusive occupation of an identifiable entity to the exclusion of the tenant.

The plaintiff then called one Mr. Oliver Wijesinghe, an Assistant Registrar-General, whose evidence apparently impressed the Commissioner. He had been a neighbour of the defendant for about four years and would surely have known whether the plaintiff had sublet any part of the premises. In the course of his evidence he said that for the first time the plaintiff asked him in 1966 as to who was staying in the premises in question in 1965, and went on to say " then I gave him a list of names. As to whether they were living as boarders or as sub-tenants I do not know ".

The learned Commissioner has failed to consider this evidence, which is certainly not inconsistent with the version of the defendant. When one considers all the circumstances in this case it seems to me that the defendant's version was the more probable one.

The appeal is allowed, and the plaintiff's action is dismissed with costs in both Courts.

Appeal allowed.