

1953

Present : Gratiaen J. and K. D. de Silva J.

JUSTIN FERNANDO *et al.*, Appellants, and ABDUL  
RAHUMAN, Respondent

*S. C. 95—D. C. Colombo, 6,375L*

*Landlord and tenant—Sub-letting—Sub-tenant's possession is not that of a trespasser.*

A sub-tenant cannot be said to be in wrongful occupation of the leased premises if the landlord, after obtaining a decree of ejection against the tenant, has since revived the contract of tenancy by continuing regularly to receive rent from the tenant. In such a case, a *rei vindicatio* action cannot be instituted by the landlord against the sub-tenant.

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

*H. W. Jayewardene*, with *D. R. P. Goonetilleke*, for the defendants appellants.

*H. V. Perera, Q.C.*, with *C. Renganathan*, for the plaintiff respondent.

*Cur. adv. vult.*

October 12, 1953. GRATIAEN J.—

This is a *rei vindicatio* action instituted by the plaintiff, who is the admitted owner of premises No. 97, Chatham Street, Colombo, against the defendants whom he alleges to have been in wrongful occupation since 31st July, 1945.

It is common ground that the plaintiff had originally let these premises, together with the adjoining premises Nos. 93 and 95, Chatham Street, to a man named Robert Silva who, while personally occupying Nos. 93 and 95, had lawfully sub-let premises No. 97 to the 1st defendant.

The plaintiff terminated the original contract of tenancy between himself and Robert Silva in respect of all these premises with effect from 31st July, 1945, and in due course sued him for ejection in an action to which the 1st defendant was not a party. On 13th May, 1946, a consent decree was entered of record whereby Robert Silva (a) was permitted to continue in occupation of premises Nos. 93 and 95 upon certain conditions with which we are not concerned in these proceedings, and (b) was to be ejected from premises No. 97. It follows that on 13th May, 1946, the 1st defendant's right to continue in occupation as a sub-tenant ceased, and that he therefore became liable to eviction by the plaintiff in properly constituted proceedings—*Ibrahim Saibo v. Mansoor*<sup>1</sup>.

The present action was thereafter instituted by the plaintiff on 27th September, 1951, and it is manifest that the 1st defendant and his servant the 2nd defendant would have had no defence to the plaintiff's claim unless they could establish that, *by reason of events occurring since 13th May, 1946*, their rights of occupation (which had become extinguished on that date) have subsequently revived. The learned District Judge took the view that no such events had taken place, and accordingly entered judgment for the plaintiff as prayed for.

It seems to me that, upon the unqualified admissions which the plaintiff has himself made in the course of his evidence at the trial, he had no cause of action against the defendants at the time when these proceedings were instituted. He conceded, for instance, that, although he had obtained a decree to eject Robert Silva from No. 97, Chatham Street, he continued regularly thereafter to receive rent from him in respect of these very premises. "As far as I was concerned" he said, "*even after the decree was entered, I looked upon Robert Silva as my tenant and the person responsible for my rents for the premises Nos. 93, 95 and 97*". It has also been established beyond doubt that, in the same way, the 1st defendant continued to pay the rents due by him to Robert Silva in terms of their subsisting contract of sub-tenancy.

Upon these facts, it is perfectly apparent that the 1st defendant was not in wrongful occupation of the premises at the time when these proceedings commenced. The plaintiff must be held, at some stage or other, to have renewed, as between himself and Robert Silva, the contractual relationship of landlord and tenant in respect of the premises, and the 1st defendant's occupation (as a sub-tenant under Robert Silva) was therefore not that of a trespasser at any relevant date. I would therefore set aside the judgment under appeal and dismiss the plaintiff's action with costs both here and in the Court below.

K. D. DE SILVA J.—I agree.

*Appeal allowed.*

<sup>1</sup> (1953) 54 N. L. R. 217.