1956 *Present :* Gratiaen, J., and Gunasekara, J.

MRS. J. BRITTO, Appellant, *and* W. HEENATIGALA, Respondent

S. C. 432—D. C. Colombo, 6,532

Rent Restriction Act, No. 29 of 1948—Sections 13 and 27—Letting of co-owned premises—Partition sale thereafter—Does not terminate statutory tenancy—Partition Ordinance (Cap. 56), ss. 4, 8.

The statutory protection of a tenant under the Rent Restriction Act is not automatically extinguished if the leased premises are purchased (either by a co-owner or by a third party) in terms of a decree for sale under the Partition Ordinance.

APPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *W. P. N. de Silva*, for the defendant appellant.

Sir Lalita Rajapakse, Q.C., with *C. G. Weeramantry*, for the plaintiff respondent.

Cur. adv. vult.

February 27, 1956. GRATIAEN, J.—

The question for our decision on this appeal is whether the statutory protection of a tenant under the Rent Restriction Act No. 29 of 1948 is automatically extinguished if the leased premises are purchased (either by a co-owner or by a third party) in terms of a decree for sale under the Partition Ordinance. In *Heenatigala v. Bird* [1] Pulle J. expressed the opinion *obiter* that " the certificate of sale issued (under section 8 of the Ordinance) had the effect of terminating the relationship of landlord and tenant and of constituting (the purchaser) an independent title holder to whom the restriction contained in section 13 of the Act could not apply because the certificate conferred a title which was not subject to the tenancy agreement ". Swan J., who pronounced the principal judgment in that case, did not discuss this problem because counsel appearing for the tenant " did not think it worthwhile to pursue the matter, and stated that his client was willing to surrender possession if he was given time ". We are therefore free to examine the question afresh. In the rest of my judgment, I shall refer to the Partition Ordinance as " the Ordinance " and to the Rent Restriction Act, No. 29 of 1948, as " the Act ".

The premises to which this action relates are situated in an area in respect of which the Act is in operation. The defendant had entered into occupation of it as a tenant on 15th October 1947 by virtue of a notarial lease executed in her favour by the plaintiff (as co-owner) and by virtue of contracts of monthly tenancy granted to her by all the other co-owners. During the subsistence of these tenancy agreements, the plaintiff instituted an action against his co-owners for the sale of the premises under the Ordinance, a partition being admittedly impracticable. On 6th July 1950 a decree was entered under section 4 declaring the plaintiff and three others to be entitled to an undivided ¼ share each and ordering the premises to be sold under section 8 subject to the rights of a mortgagee. The premises were accordingly put up for sale by public auction on 12th October 1950 and the plaintiff was declared the purchaser. The sale was in due course confirmed by the Court, and on 5th February 1952 a certificate of sale was issued to the plaintiff under section 8 as evidence of his title as sole owner. Shortly afterwards he sued the defendant for ejectment on the footing that her former rights as tenant had been extinguished by the decree for sale and that, as purchaser, he was now vested with a title which brought to an end the statutory protection which she would otherwise have enjoyed under the Rent Restriction Act No. 29 of 1948. The learned District Judge upheld this contention and ordered a decree for ejectment as prayed for, awarding damages at Rs. 40/55 per mensem less a sum of Rs. 280/24 which the defendant had paid on the plaintiff's behalf as Municipal rates.

I have come to the conclusion that the propositions of law relied on in support of the plaintiff's cause of action must be rejected. The decree for sale entered under section 4 of the Ordinance certainly had the effect of bringing to an end the contractual relationship which previously existed

[1] *(1954) 55 N. L. R. 277 at 280.*

between the defendant as tenant and the co-owners (taken collectively) as "landlord". Nevertheless, the statutory protection conferred on the defendant by section 13 of the Act was not extinguished either by the decree for sale dated 6th July 1950 or by the certificate of sale dated 5th February 1952. The plaintiff is therefore precluded from claiming the ejectment of the defendant without the authorisation of the Rent Control Board because he has not established that the defendant's protection under the Act has come to an end for one or other of the reasons set out in the proviso to section 13.

It is important to realise that section 13 of the Act operates "notwithstanding anything in any other law". This means that the "tenant" is protected even though his contractual rights may have been terminated (e.g., by due notice or by effluxion of time) or extinguished by operation of law (e.g., by virtue of the combined effect of sections 4, 8, and 9 of the Ordinance). In the context of section 13 the word "tenant" necessarily includes (and generally means) a person who continues to occupy the protected premises after his contractual rights under the common law have come to an end. *Gunaratne v. Thelenis* [1]. The observations of Lord Porter in *Baker v. Turner* [2] may usefully be quoted in this connection:

> "The rules of formal logic must not be applied (to the language of Rent Restriction legislation) with too great strictness. As Scrutton L. J. has more than once pointed out, they must be viewed in the light of their aim and object and it must always be remembered that the difficulty in construing them is enhanced by the fact that words and phrases apt to describe the relationship of a common law landlord and tenant one to another have been used without specific definition of another and statutory relationship viz. that of a protected tenant or sub-tenant to his immediate, or perhaps remote, landlord."

Referring to this statutory relationship, Evershed M.R. observed as follows in *Marcroft Wagons Ltd v. Smith* [3]:

> "A few sentences from the judgment of Bankes L.J. in *Remon's case* [4] will illustrate as well as possible the strangeness, at any rate as it would have appeared to a pedantic lawyer of the nineteenth century, of this conception. Referring in that case to the person claiming to retain possession of the premises, the Lord Justice said: 'In no ordinary sense of the word was respondent a tenant of the premises on July 2nd. His term had expired. His landlord had endeavoured to get him to go out. He was not even a tenant at sufferance. It is however clear that in all the Rent Restriction Acts the expression *tenant* has been used in a special and peculiar sense, and as including a person who might be described as an ex-tenant, someone whose occupation had commenced as tenant and who has continued in occupation without any legal right except possibly such as the Acts themselves conferred upon him'."

The further question arises in the present case as to whether the plaintiff, after purchasing the premises under the provisions of the Ordinance, could fairly be described as the defendant's "landlord" within the

[1] *(1946) 47 N. L. R. 433.*
[2] *(1950) A. C. 401 at 417.*
[3] *(1951) 2 K. B. 496 at 502.*
[4] *(1921) 1 K. B. 49 at 54.*

meaning of the Act. Section 27 defines the term as meaning "the person for the time being entitled to receive the rent of such premises . . .". Under the common law, the word "rent" presupposes a subsisting contractual relationship whereby an agreed sum is paid by one of the parties for the occupation of the other's property. But here again the object of the Act would be defeated if we were to interpret the word "with too great strictness". In my opinion, the reference to "rent" implies that "so long as a tenant enjoys a statutory right of occupation notwithstanding the termination of the earlier contract, a statutory obligation is imposed upon him to pay *rent* at the original contractual rate." *Sideek v. Sainambu Natchiyar* [1]. In short, words such as "landlord", "tenant" and "rent", which are strictly appropriate only to describe a common law relationship, must all receive a meaning in the Act consistent with the conception (which is no doubt fictitious) that the old relationship still subsists during the period of statutory protection. The justification for this "broad, practical, common-sense interpretation" is that it provides the only means of giving effect to the intention of the legislature. *Read v. Goater* [2]. At the same time I agree entirely with Sir Lalitha Rajapakse that it would be quite wrong to include within the definition of a "landlord" any person other than the original lessor or someone who derives his title from the original lessor. If, therefore, the true owner of the leased premises vindicates his title against the tenant's contractual lessor, the statutory protection which the tenant enjoyed against the lessor would not be available against the true owner.

Sir Lalitha's main argument was that a purchaser at a sale held under the Ordinance acquires "a title paramount" which is not in truth derived from the person declared in the decree to be the co-owners, and that there is no *nexus* by derivation from the co-owners (the tenant's lessors) sufficient to give him the status of a "landlord" within the meaning of that Act. In support of this submission, much reliance was placed on de Sampayo J.'s frequently quoted observation in *Bernard v. Fernando* [3] that "partition decrees are not like other decrees affecting land, merely declaratory of the existing rights of the parties *inter se*. They create a new title in the parties absolutely good against all the world". I would not presume to question the correctness of this analysis, and, with respect, I think that it admirably explains the effect of a final decree *for partition* whereby a co-owner receives, in lieu of his former undivided interests, absolute title to a divided allotment of the common property. But de Sampayo J. has nowhere suggested that this analysis is equally appropriate where a decree *for the sale* of the common property has been entered under section 4 of the Ordinance. A decree for sale under section 4 expressly declares that the common property belongs to certain specified co-owners in certain specified proportions, and then proceeds to order a sale of the property by public auction. In such a situation, it is the title of the persons declared to be co-owners which is put up for sale. The only substantial difference between a

[1] *(1954) 55 N. L. R. 367, 368.* [2] *(1921) 1 K. B. 611, 615.*
[3] *(1913) 16 N. L. R. 438, 439.*

sale under the Ordinance and an ordinary sale in execution proceedings is that in the former case section 9 declares the title to be unimpeachable and good against all the world.

Until the certificate of sale is issued to the purchaser "the common bond of co-ownership" continues between the persons in whose favour the decree under section 4 was passed. *Kahan Bhai v. Perera* [1]. "Upon the issue of the certificate of sale to the purchaser under a decree for sale, the title declared to be in the co-owners is definitely passed to the purchaser . . . ." per Garvin J. in *Fernando v. Cadiravelu* [2]. Indeed, section 8 emphasises that the certificate of sale merely operates to pass the co-owners' title to the purchaser as effectively as if they themselves had executed a conveyance in his favour. Accordingly, the purchaser's title is in truth a title derived from the persons declared to be the co-owners of the property. If, therefore, they had been the tenant's "landlords" within the meaning of the Act, their statutory status was transferred to him by operation of law.

It is quite correct to say that the decree for sale under section 4 of the Partition Ordinance had the effect of wiping out the contractual rights of lessors and monthly tenants. *Samaraweera v. Cunjimoosa* [3]. Under the common law, therefore, the defendant could not have resisted the claim for her ejectment. But it is at this stage that the Act intervenes to give her protection. Although the common law relationship of landlord and tenant between the co-owners and herself was extinguished, a statutory relationship was created in its place which prevented them from ejecting her except upon one or other of the conditions permitted in section 13. In February 1952 the plaintiff, as purchaser, succeeded to the status of a statutory landlord.

Distinguished Judges have explained in different ways the protection granted to tenants by Rent Restriction legislation. Evershed M. R. in the *Marcroft Wagons Ltd. case* [4] speaks of a "statutory right of irremovability" and of a "right to occupy premises with many of the attributes of a tenancy without the essential qualifications of an interest in land" (page 503). Denning L.J. tells us in the same case that a "tenant" is clothed in "the valuable status of irremovability" (page 506). Whichever explanation be regarded as more appropriate in terms of jurisprudence, the legislature has found it necessary to impose a statutory fetter on the common law right of landlords and their successors in title to eject the tenant after the contract itself has (for whatsoever reason) come to an end. I would allow the appeal and dismiss the plaintiff's action with costs in both Courts. The defendant is entitled to credit in the sum of Rs. 280/24 previously referred to against sums due by her to the plaintiff as "rent" (which the learned Judge has rightly fixed at Rs. 40/55 per mensem).

GUNASEKARA, J.—I agree.

Appeal allowed.

[1] *(1923) 26 N. L. R. 204 (F.B.)*
[2] *(1927) 28 N. L. R. 492, 493.*
[3] *(1915) 18 N. L. R. 408 (F.B.)*
[4] *(1951) 2 K. B. 496.*