

1971

Present : H. N. G. Fernando, C.J.

K. A. JOVIS PERERA, Appellant, and D. H. SENEVIRATNE,
Respondent

S. C. 136/69—C. R. Colombo, 97366/R.E.

Landlord and tenant—Sub-letting—Requirement of evidence of payment of rent by the sub-tenant.

A landlord who pleads a sub-tenancy has to discharge the burden of proving that some person not only occupied the premises or some part thereof, but also that he paid rent for his occupation.

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

N. Balakrishnan, for the defendant-appellant.

S. Sharvananda, for the plaintiff-respondent.

Cur. adv. vult.

November 18, 1971. H. N. G. FERNANDO, C.J.—

The only question for consideration in this appeal is whether the evidence justified the finding of the learned Commissioner that the defendant had sub-let a part of the premises of which he was the tenant. The plaintiff's principal witness was one Sinniah, who was alleged in the plaint to have been a sub-tenant under the defendant. This witness commenced his evidence by stating that he had some years previously occupied some part of the premises, but that he did so because he was employed to look after some cows kept by the defendant.

It is surprising that the examination of the witness did not terminate at this stage, and that Counsel for the defence raised no objection to further adverse questioning on the basis that the witness had in some complaint to the Police alleged that he had paid rent to the defendant. Thereafter, and again without objection, plaintiff's Counsel produced a certified copy of the complaint which the witness is said to have made to the Police; while admitting that he had made a complaint, the witness denied that he had in that complaint admitted any payment of rent to the defendant.

In view of the clear denial by the witness that he had in his complaint admitted any payment of rent to the defendant, the plaintiff could not rely on the certified copy which his Counsel "produced". Even if the plaintiff was entitled to contradict his own witness, he could have done so only by proving that the witness had made a different statement to the Police; this the plaintiff failed to do, because the statement was not duly proved in evidence; the plaintiff did not call the Police officer who recorded the complaint or any other officer who could testify to its authenticity.

There was thus no legal evidence to counter that given by the plaintiff's principal witness that he had occupied some part of the premises as an employee of the defendant, and not as a tenant. The plaintiff, who had on a single occasion seen the witness Sinniah standing in the garden, had the audacity to mark on a sketch as 'X' the room which he alleged had been occupied by that witness. Even if he did so in good faith, he was at the best merely repeating some statement made to him by a person who did not give evidence at the trial.

In the result, the case for the plaintiff was closed without there being any evidence to discharge the burden of proving the alleged sub-tenancy. Had the learned Commissioner appreciated this position, I greatly doubt whether certain deficiencies in the evidence of the defendant's wife would have induced him to reach the finding that there had been any sub-letting to Sinniah. Even if Sinniah had in a former complaint alleged that he had paid rent to the tenant of these premises, that complaint could well have been false. Evidence of a former statement by a witness serves at the highest to contradict his evidence in Court, but does not suffice to establish the truth of the former statement.

A plaintiff who pleads a sub-tenancy has to discharge the burden of proving that some person not only occupied the premises or some part thereof, but also that he paid rent for his occupation. There was no proof in this case of any such payment.

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

Appeal allowed.