1968 *Present :* Wijayatilake, J.

G. P. NANDIAS SILVA, Appellant, *and* T. P. UNAMBUWA, Respondent

S. C. 3/67—C. R. Colombo, 89415 (R. E.)

National Housing—Right of tenant to sue sub-tenant—Procedure—National Housing Act, Part V—Inapplicability of Rent Restriction Act.

Plaintiff was a tenant of certain premises of the National Housing Department under an agreement which provided that he should not let or sub-let any part of the premises. The defendant occupied a distinct portion of the house as a sub-tenant on a monthly rental of Rs. 90. Plaintiff stated in his evidence that he obtained the necessary permission from the Commissioner of National Housing.

Held, that the plaintiff was entitled to sue the defendant for ejectment from the annexe on the basis of a monthly tenancy. In such a case neither the Rent Restriction Act nor the special procedure prescribed in Part V of the National Housing Act is applicable.

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

H. W. Jayewardene, Q.C., with *W. S. Weerasooria*, for the defendant-appellant.

Walter Jayawardena, Q.C. with *Lakshman Kadirgamar*, for the plaintiff-respondent.

Cur. adv. vult.

November 25, 1968. WIJAYATILAKE, J.—

In this case the plaintiff has sued the defendant for ejectment from the annexe to premises 623, Nawala Road, Rajagiriya, on the basis of a monthly tenancy. The learned Commissioner entered judgment for the plaintiff as prayed for.

Admittedly the premises in question are owned by the National Housing Department and the plaintiff is a tenant of this Department (*vide* tenancy agreement D1 of 2.12.60). It would appear that the plaintiff, who is a President, Labour Tribunal, was transferred to Kandy and one P. S. Perera came into occupation as his tenant and sometime thereafter the defendant occupied a distinct portion of this house as a sub-tenant on a monthly rental of Rs. 90.

Learned Counsel for the appellant has raised several defences: Firstly, whether this action is properly constituted as admittedly the National Housing Department is the landlord under the agreement D1. Clause 8 of this agreement provides that the tenant (the present plaintiff) shall not let or sub-let any part of the premises. The National Housing Act No. 37 of 1954 has in Part V set out the procedure for the recovery of possession of houses let out by the Department. In fact the defendant in the present action was a party to an application made under the aforementioned procedure by the Commissioner of National Housing in respect of these very premises, and it was held by this Court that the procedure referred to is not available in a case where the original occupier holding under the Commissioner sub-lets the premises or permits some other person (not being a dependant) to occupy the premises. The Amending Act No. 36 of 1966 clarifies the position (vide *G. P. N. Silva v. Commissioner of National Housing*)[1]. Therefore in my view the objection to this action on this ground cannot be sustained.

Secondly the question has been raised as to whether the defendant is a tenant of the plaintiff. Counsel for the appellant submits that on the evidence of plaintiff himself it is clear that there is no privity of contract as between the plaintiff and the defendant; the defendant having come into occupation as a 'tenant' of the plaintiff's 'tenant' P. S. Perera. Counsel for the respondent has drawn my attention to the original answer which categorically admits the tenancy averred in the plaint, although in the amended answer the defendant has sought to deny it. The plaintiff has produced a series of letters P1 to P9 for the period 11.3.63 to 10.1.64 showing that the defendant had forwarded the monthly rent in respect of these premises to the plaintiff; so that there can be no doubt whatever that although it was through P. S. Perera the defendant had come into occupation of the premises the defendant had recognised the plaintiff as the landlord. In my view this affords adequate proof of the privity of contract.

Thirdly, the Counsel for the appellant submits that the sub-letting is void in law in view of clause 8 of the agreement D1. Counsel for the respondent has met this submission by relying on the principle set out by

[1] (1968) 70 N. L. R. 573.

Wille in Landlord and Tenant (3rd ed.) at page 18 that a person may let to another immovable property without having any right or title in it or any authority from the true owner. Vide *de Alwis v. Perera*[1]. No doubt sub-letting in breach of a prohibition contained in the contract of tenancy gives a landlord a right to cancel the tenancy. However, in the instant case, despite clause 28 of the agreement which provides for a termination the Commissioner of National Housing has not availed himself of it to terminate the tenancy. (*Vide* Wille pp. 114-116 and 176 and the case of *Robert v. Rasheed*[2].) I might state that the only witness in this case is the plaintiff and his evidence is that in view of clause 8 of the agreement he got the necessary permission from the Commissioner of National Housing. It is true that he has not called any evidence in support but the defendant has not made any attempt to controvert this assertion. I do not think the submission of the appellant on this ground can be accepted in the circumstances.

Fourthly, the Counsel for the appellant submits that the premises are governed by the Rent Restriction Act and therefore a sub-tenant can rely on the statutory protection given to a tenant. *Ibrahim Saibo v. Mansoor*[3]. He further contends that the principle set out in the case of *Fonseka v. Wanigasekera*[4] in which Sri Skanda Rajah J. held that the Rent Restriction Act does not apply to the premises belonging to the Crown is of no avail to the plaintiff in the light of the judgment of Gratiaen J. in the case of *Davith Appu v. Attorney-General*[5]. The facts in the case of *Fonseka v. Wanigasekera* appear to be analogous to the facts before me and with respect I see no substantial reason to take a different view. In the earlier case the question was the right of the Crown to eject an over-holding tenant, and I think it can be distinguished from the instant case.

Learned Counsel for the respondent has submitted that the issue raised by him as to whether the defendant is estopped in law from denying the tenancy under the plaintiff had been wrongly rejected by the learned Commissioner. He relies on the cases of *Jayawardene v. Jayawardene*[6] and *Sumanatissa Therunanse v. Pangnananda Therunanse*[7]. Learned Counsel for the appellant has drawn my attention to the fact that estoppel has not been pleaded and therefore the learned Commissioner was well within his right in rejecting this issue. I am inclined to agree with him.

As I have already observed I see no merit in the several points raised in this Appeal by the appellant. I would accordingly dismiss the appeal with costs.

Appeal dismissed.

[1] *(1951) 52 N. L. R. 433.*
[2] *(1954) 55 N. L. R. 517.*
[3] *(1953) 54 N. L. R. 217.*
[4] *(1963) 65 N. L. R. 552.*
[5] *(1948) 49 N. L. R. 356.*
[6] *(1939) 40 N. L. R. 467. (P. C.)*
[7] *(1968) 70 N. L. R. 313. (P. C.)*