

1968

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

Mrs. L. JAYAWARDENA and another, Appellants, *and*  
V. KANDIAH, Respondent

*S. C. 2/67—C. R. Colombo, 87630/R. E.*

*Rent Restriction Act—Sub-letting—Quantum of evidence.*

The 1st defendant, a tenant, permitted the 2nd defendant to carry on business in the rented premises but the latter did not have exclusive possession and occupation of a separate portion of the premises.

*Held*, that the facts did not justify the finding that there had been a sub-letting to the 2nd defendant.

**A**PPEAL from a judgment of the Court of Requests, Colombo.

*C. Ranganathan, Q.C.*, with *N. S. A. Goonetilleke*, for the Defendants-Appellants.

*H. W. Jayewardene, Q.C.*, with *R. D. C. de Silva* and *Miss C. Lenaduwa*, for the Plaintiff-Respondent.

*Cur. adv. vult.*

May 16, 1968. H. N. G. FERNANDO, C.J.—

The learned Commissioner of Requests has entered decree for the ejection of the 1st defendant from premises No. 144, Panchikawatte Road, Colombo, on the ground that a portion of the premises was let to the 2nd defendant without the consent of the landlord.

The defendants did not in their evidence deny that the 2nd defendant carried on the purchase and sale of motor spares parts in the premises. It would appear that the premises consist of three rooms, the first of which adjoins the main road. In this first room there is a counter, on one side of this counter is a space in which there are cupboards and a table, and on the other side of the counter is a space which provides access to a door leading to the two other rooms. In these two rooms the 1st defendant (the tenant) carries on the process of electro-plating of articles, and the two rooms are occupied exclusively by her for this purpose.

The evidence of the 1st defendant concerning the use of the counter and of the cupboards in the front room was uncontradicted. The 1st defendant stated that her husband had for many years carried on the business of electro plating in these premises and that the 2nd defendant used to help her husband in the business and also keep his own goods in the premises. She said that after her husband died, the 2nd defendant used to help her in the business of electro plating by collecting orders for her and by attending on the customers who bring articles for plating. She further said that the cupboards belonged to her but that she permitted the 2nd defendant to keep some of his articles in the cupboards. Having regard to the nature of the premises there can be no doubt as to the truth of the evidence that the 1st defendant's receipt books and letter heads are kept on a table which stands by the side of the counter.

As I have pointed out, the plaintiff called no evidence to contradict the defence testimony that the 1st defendant had a right of access to the entire space in the front room and that the furniture in that room was used by both defendants.

It is clear therefore that the 2nd defendant had no exclusive right to the use of the front room or even to the use of the space and the furniture on one side of the counter.

The learned Judge's conclusion of fact that the 2nd defendant did carry on business in the premises, however correct it was, did not justify the finding that there has been a sub-letting to the 2nd defendant; whatever the arrangement between the parties may have been, it conferred no right on the 2nd defendant to the exclusive possession and occupation of a separate portion of the premises.

The judgment and decree are set aside and the plaintiff's action is dismissed with costs in both Courts.

*Appeal allowed.*

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