

1973

Present : Rajaratnam, J.

Mrs. M. S. PERERA and another, Appellants and Mrs. S.
KUMARASAMY and others, Respondents

S. C 105/71—C. R. Colombo, 97841

Rent-controlled premises—Action in ejectment—Death of tenant pending action—Substitution of his heirs as defendants—Continuance of action against them—Permissibility—Rent Restriction Act (Cap. 274), s. 18.

Where a tenant of rent-controlled premises dies pending an action for rent and ejectment instituted against him by the landlord, his heirs can be substituted and the action can continue against the substituted defendants.

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

S. W. Jayasuriya, for the defendants-appellants.

C. Ranganathan, with *A. Sivagurunathan* and *S. Rudira-moorthy*, for the plaintiffs-respondents.

Cur. adv. vult.

September 18, 1973. RAJARATNAM, J.—

This was a rent and ejectment case where the defendant tenant died and the defendant-appellants were substituted. At the conclusion of the arguments by learned Counsel for the appellants and respondents I dismissed this appeal with costs and reserved the delivery of reasons.

¹ (1933) 35 N. L. R. 143.

Learned Counsel for the appellants strenuously argued that the plaintiffs cannot maintain this action against the substituted defendants as the cause of action did not survive the original defendant who died. Mr. Advocate Jayasuriya argued that in this case under s. 18 of the Rent Act, the substituted defendants did not give the required written notice after the death of the defendant tenant for the continuance of the tenancy and therefore the cause of action arising out of the Rent Restriction Act did not survive against them. He referred me to the judgment of Sansoni, J. in *Fernando v. Madanayake*¹ where the defendant the daughter of the tenant disputed the title of the plaintiff to be her landlord and denied any privity of contract between her and the plaintiff. He also cited the judgment of Tambiah, J. in *Silva v. Abeyasundara*². His position was that following the decisions in these two cases, where the tenant dies the cause of action does not survive where there is no continuation of tenancy under s. 18 of the Act. The facts in both these cases can be distinguished. In *Silva v. Abeyasundara*, the plaintiff sued the sub-tenant after the death of the tenant and in *Fernando v. Madanayake* the original defendant was the tenant's daughter.

But in this case as Mr. Ranganathan points out the defendants are substituted. The original defendant the deceased had to on the due termination of his tenancy hand back the property and the defendants, his heirs, have been substituted in his stead to answer the deceased's liability. The plaintiff did not depend on the continuation of the tenancy to pursue his action.

I therefore hold that where a tenant dies, his heirs can be substituted and the action can continue against the substituted defendants. For these reasons the appeal was dismissed with costs.

Appeal dismissed.

¹ (1962) 64 N. L. R. 455.

² (1961) 63 N. L. R. 94.