

1959

*Present: K. D. de Silva, J.*

H. D. PEDRICK, Appellant, *and* MRS. M. R. M. MENDIS,  
Respondent

*S. C. 82—C. R. Colombo, 66260*

*Landlord and tenant—Notice to quit—Position when tenant disclaims tenancy—Rent Restriction Act, No. 29 of 1948.*

A tenant who disclaims the tenancy is not entitled to a notice to quit.

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

*C. S. Barr Kumarakulasinghe, with G. L. L. de Silva, and D. C. W. Wickremasekera, for the defendant-appellant.*

*H. W. Jayewardene, Q.C., with D. R. P. Goonetilleke, for the plaintiff respondent.*

*Cur. adv. vult.*

December 21, 1959. K. D. DE SILVA, J.—

This is an action for rent and ejectment. The plaintiff averred in the plaint that the defendant took on rent from her premises No. 515, Galle Road, Mount Lavinia, on a monthly tenancy at a rental of Rs. 37·50 a month and sought to eject him on the ground that the rent for the months of January, February and March 1957 was in arrear. She also averred that on April 29, 1957, she had given notice to the defendant to quit the premises on or before the 31st day of May, 1957.

The defendant filed answer denying that the plaintiff let the premises to him but that he took the same on rent on or about May 1, 1954, from one G. H. Dharmadasa on a monthly tenancy at a rental of Rs. 50 a month.

It is not denied by the plaintiff that originally the defendant took these premises on rent from Dharmadasa but she stated that thereafter the latter by deed P7 of December 4, 1956, leased these premises to her for a period of 10 years. Her position is that after the execution of this lease the defendant attorned to her and paid her rent for December, 1956, but he failed to pay the rent for January, February and March 1957. The defendant admitted the execution of the lease P7. He stated that after that lease was executed Dharmadasa instructed him to pay the rent to the plaintiff and that he did so for the month of December, 1956. He however denied that he became the tenant of the plaintiff. His position was that the plaintiff received the rent as the agent of Dharmadasa.

The learned Commissioner of Requests, after trial, held with the plaintiff and entered judgment in her favour. This appeal is against that judgment.

At the hearing of the appeal Mr. Barr Kumarakulasinghe, the counsel for the defendant appellant raised two points. Firstly he contended that there was no contract of tenancy between his client and the plaintiff and secondly the notice to quit which is produced in the case marked D2 is bad in law.

The first point is not a sound one. The defendant's contention that he paid the rent to the plaintiff as the agent of Dharmadasa is not borne out by the evidence in the case. After the lease P7 was executed the defendant wrote the letter P1 on January 17, 1957 to the plaintiff enclosing a money order for Rs. 50 being the rent for December stating that Dharmadasa had informed him that he had leased the premises to the plaintiff for a period of 10 years and that he had requested him to pay the rent to her. Then on January 30, 1957 the defendant addressed the letter P2 to the plaintiff calling for a receipt for the rent paid for December and also informing her that the roof was leaking and that the house required repairs and white washing. In that letter he asked her to

get the necessary repairs done. No reply was sent to that letter. Therefore the defendant wrote the letter P3 on April 25, 1957, to the plaintiff requesting her again to get the necessary repairs effected. He also stated in that letter that a sum of Rs. 275 was necessary to effect these repairs and enquired from the plaintiff whether she would give him permission to get the work done. When the plaintiff failed to carry out the necessary repairs the defendant claimed to have retained the rent due after January 1957 for the purpose of effecting those repairs. He stated that he did so at the request of Dharmadasa who according to him was the landlord. Dharmadasa who was called as a witness by the defendant denied that he gave such instructions to the defendant and he also said that no repairs were, in fact, necessary. On June 5, 1957, the defendant sent a money order for Rs. 187.50 to the plaintiff in payment of the rent in arrear. The plaintiff however refused to accept this payment and returned the money order to the defendant. There is very clear evidence that soon after the lease P7 was executed in favour of the plaintiff by Dharmadasa the defendant attorned to the plaintiff. The position that the defendant took up in this case that he was not a tenant of the plaintiff is quite untenable.

The next point which arises for decision relates to the notice to quit given by the plaintiff to the defendant. According to the plaintiff this notice was sent to the defendant by registered post on the 29th April, 1957. The document D2 is the notice which the defendant received. His counsel contended that this was not a valid notice for two reasons namely (1) it was not correctly dated and (2) it was received by the defendant only on the 2nd or 3rd May, 1957. It is true that this notice has not been correctly dated because neither the month nor the year appears at the top of it although in the body of the notice itself the defendant is required to quit on the 31st day of May, 1957. The plaintiff however has produced the counterfoil P9 of this notice and the postal receipt P8. Both these documents bear the date 29.4.57. This notice was sent by the plaintiff's proctor but he was not called as a witness to state that he posted it on 29.4.57. The defendant's evidence that he received the notice to quit on 2nd or 3rd May, 1957, stands uncontradicted. Therefore it is reasonable to hold that the plaintiff has failed to prove that the defendant received a clear month's notice which he was entitled to receive. Hence D2 is not a valid notice. The counsel for the defendant contended that the plaintiff's action must fail on that ground. The Rent Restriction Act, No. 29 of 1948, does not provide for giving such notice. It is the common law which requires that a monthly tenancy should be determined by a month's notice. However the common law also provides that a tenant who disclaims the tenancy is not entitled to a valid notice to quit. In *Muttu Natchia v. Patuma Natchia*<sup>1</sup> dealing with a tenant who disclaimed the tenancy Browne, J. stated "It was unnecessary therefore that the plaintiff, as he did, should have averred or have sought to prove any notice to quit given by him to the defendant,

<sup>1</sup> (1895) 1 N. L. R. 21.

and defendant was not entitled to have the action dismissed because no valid notice was given." This decision was followed in *Sundera Ammal v. Jusey Appu* <sup>1</sup>.

I therefore hold that the defendant in this case who denied that he was the tenant of the plaintiff was not entitled to a notice to quit. I dismiss the appeal with costs.

*Appeal dismissed.*

