1958 *Present :* Gunasekara, J.

E. A. PAUL *et al.*, Appellants, *and* A. GEVERAPPA REDDIAR, Respondent

S. C. 55—C. R. Colombo, 60,124

Landlord and tenant—Land and buildings let as a single unit—Right of lessee to claim protection of the Rent Restriction Act—Meaning of term "premises".

Where property capable of being divided into different lots some of which would consist mainly or solely of buildings and others solely of land with no buildings on it is let as a single unit at a single rent, it is a question of fact whether such property consists of buildings with appurtenant land or land with appurtenant buildings.

Plaintiffs let certain property to the defendant on a contract of monthly tenancy. The property consisted of buildings and a grass field. The buildings formed the chief feature of the leased property and were to be used for the purpose of a dairy. The grass land was merely an "adjunct".

Held, that the leased property constituted "premises" within the meaning of the Rent Restriction Act ; the tenant was, therefore, entitled to the protection of the Act.

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

Felix Dias, with *H. D. Perera*, for plaintiffs-appellant.

T. Arulanandan, for defendant-respondent.

Cur. adv. vult.

January 17, 1958. GUNASEKARA, J.—

This appeal arises out of an action brought by the appellants for the ejection of the respondent from certain property that they had let to him on a contract of monthly tenancy and for the recovery of rent alleged to be in arrear and damages for overholding. The tenancy began on the 10th July 1951 and was terminated on the 31st October 1955 by a notice to quit given to the respondent on the 5th September 1955. The rent stipulated in the contract, which was in writing, was Rs. 150 a month, but the Rent Control Board purported to fix the authorized rent at Rs. 102·33 a month. The main issue at the trial was whether the property was one to which the Rent Restriction Act applied. It was contended for the appellants that it did not constitute " premises " within the meaning of the Act and therefore the respondent was not protected by the Act. The learned commissioner of requests answered this issue and all the subsidiary issues against the appellants and dismissed the action with costs.

In a document acknowledging the receipt of rent for the period 10th July to 31st August 1951 the appellants describe the demised property as

" the following premises :

(*a*) No. 5 (Dairies Two)

(*b*) No. 5A (Front Room) and

(*c*) Grassland excluding the following

(*a*) Five houses bearing Nos. 5B, 5C, 5D, 5E & 5F.

(*b*) 6 Blocks of Vegetable Garden and

(*c*) 6 Huts in the Grassfield ".

According to the evidence given by the 1st appellant the entire extent of the land that was let was 4½ acres, and a little more than a quarter of an acre of this was high land while the rest was grass field. The buildings described as Nos. 5 and 5A stood on the high land.

At the hearing of the appeal it was conceded by the learned counsel for the appellants that the high land and the buildings standing on it were " premises " within the meaning of the Act and therefore the Act applied to them. He maintained, however, that the rest of the property, consisting of what was described in the receipt as grass land, was not " premises " and was therefore not property to which the Act was applicable ; and that though there was a single contract between the parties it did not relate solely to property to which the Act applied but to other property as well. On this ground it was claimed that the appellants were entitled to have the respondent ejected from that portion of the demised property which consisted of grass land.

I am unable to accept this contention. The property may be capable of division into different lots some of which would consist mainly or solely of buildings and others solely of land with no buildings on it. Though it may be capable of being so divided into new units, what was actually let was a single unit at a single rent and not several units consisting of the lots into which the property could be divided. It seems to me that the real question is not whether what was let consisted of

property to which the Act did not apply as well as property to which it did, but whether it consisted of buildings with appurtenant land or land with appurtenant buildings. This is a question of fact, and the learned commissioner, who inspected the property at the request of both parties, has answered it in favour of the respondent. He has held that it was the intention of the parties that " the premises were to be used primarily for the purpose of a dairy " and that " the grass land merely came into it as an adjunct ", and also that " the grass field portion yields no income and the predominant and striking character of the parcels leased are the dairy buildings ". There appears to be no ground for disturbing this finding of fact. It follows that the learned commissioner's finding that the respondent is entitled to the protection of the Act must be affirmed and the appeal fails.

The appeal is dismissed with costs.

Appeal dismissed.