

1961

Present : T. S. Fernando, J.

M. MARTHELIS PERERA, Appellant, *and*
D. M. JAYASEKERA, Respondent

S. C. 121 of 1960—C. R. Colombo, 76145

Rent Restriction Act—“ Reasonable requirement ”—“ Alternative accommodation ”.

In considering whether premises are reasonably required for the occupation of a landlord the question of alternative accommodation is a relevant fact to be taken into account.

The fact that a person has purchased rented premises with the intention of going into occupation thereof is not by itself sufficient to show that he reasonably requires those premises.

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

G. P. S. de Silva, for the defendant-appellant.

S. D. Jayawardene, for the plaintiff-respondent.

Cur. adv. vult.

October 18, 1961. T. S. FERNANDO, J.—

This appeal has been ably presented at the argument by learned counsel for the defendant who has contended that not merely has the learned Commissioner of Requests overlooked the existence of certain evidence but that he has misdirected himself on the question of the reasonable requirement of the premises in question by the landlord.

When adverting to the question of alternative accommodation, the learned Commissioner observes that there is no evidence to show that the tenant had made any inquiries regarding such accommodation. It has, however, been pointed out to me that the defendant did say he had been searching unsuccessfully for a house for his occupation and this statement went unchallenged in cross-examination. As Soertsz J. observed in *Abeywardene v. Nicholle*¹, the question of alternative accommodation is a relevant fact to be taken into account along with other facts in considering the question of reasonableness of requirement.

The plaintiff lives in the adjoining premises which belong to her father, but her case is that the father wishes to donate those premises to her sister who is to be married shortly. There is no reason advanced or suggested why the sister cannot live with her husband-to-be or continue to live where she is at present. The principal reason indicated in the judgment for deciding the only issue in the case in favour of the plaintiff is that there is no good reason why she should be deprived of occupation of the house which she bought with the intention of going into occupation thereof. As Sansoni J. said in *Suppiah Chettiyar v. Samarakoon*², “while one sympathises with a man who invests a large sum of money in property in the expectation of getting vacant possession, that factor only indicates his anxiety to obtain the premises but is not a measure of the reasonableness of his claim”. In considering whether premises are reasonably required for the occupation of a landlord, it has been held that a Court must take into account not only the position of the landlord but also that of the tenant together with any other factor that may be directly relevant to the acquisition of the premises by the landlord—*Gunaseena v. Sangaralingam Pillai Co.*³. The defendant is a carter by occupation and he has a wife and two children living with him in these premises. He has been in occupation of these premises as a tenant for some eighteen years. There does not appear to have been a consideration

¹ (1944) 27 C. L. W. at 102.

² (1954) 56 N. L. R. at 163.

³ (1948) 49 N. L. R. at 476.

of the relative hardships to the landlord and to the tenant by the learned Commissioner ; and in these circumstances it is open to me now to consider that question on the evidence led at the trial. I am satisfied that on the evidence disclosed in this case the plaintiff has failed to establish that the premises are reasonably required for occupation by her and her family. It follows, therefore, that the plaintiff's action must fail.

I would set aside the order made in the Court of Requests and direct that the plaintiff's action be dismissed with costs in both Courts.

Appeal allowed.

