

1957

Present : Basnayake, C.J., and Pulle, J.

ABDUL HAFEEI, and another Appellant, and MUTTU
BATHOOL, Respondent

S. C. 582—D. C. Galle, 5,228/L

Landlord and tenant—Monthly tenancy—Death of tenant—Effect on contract of tenancy—Rent Restriction Act, s. 18.

On the death of a monthly tenant the contract of tenancy terminates at the end of the month in which the tenant dies, and the heirs or executors of the deceased tenant are not entitled to occupy the premises thereafter except upon a fresh contract with the landlord or unless they can avail themselves of section 18 of the Rent Restriction Act.

APPPEAL from a judgment of the District Court, Galle.

H. V. Perera, Q.C., with *E. R. S. R. Coomaraswamy*, for Plaintiff-Appellants.

H. W. Jayewardene, Q.C., with *M. Markhani*, for Defendant-Respondent.

Cur. adv. vult.

April 11, 1957. BASNAYAKE, C.J.—

In this action the plaintiffs who claim to be the co-owners of premises No. 124 in Main Street, Galle, each being entitled to an undivided half share ask for a decree in ejectment and damages against the defendant who is the widow and executrix of the estate of one A. M. A. Cader.

It would appear that Cader was a monthly tenant of premises No. 124 at the time of his death and that he carried on therein a hardware business. Cader died on 6th March 1951 and his widow the defendant has since that date continued to occupy the premises and carry on the same business therein. The plaintiffs assert that the defendant has no right to remain in the premises and is therefore in unlawful occupation of it and seek her removal by process of court. No rent has been accepted by the plaintiffs from the defendant at any time and they have all along refused to recognise her as tenant. The plaintiffs claim from her damages at the rate of Rs. 115/76 per mensem from the date of Cader's death till she delivers up possession of the premises and they are placed in quiet possession.

The defendant contended at the trial that on Cader's death his rights and obligations under the contract of tenancy passed by operation of law to her as the executrix of his last will.

The learned trial Judge has upheld that contention. He bases his finding on a statement at page 102 of *Lee and Honore's Law of Obligations*.

The appellant canvasses that finding. It is submitted that on the death of a monthly tenant the contract of tenancy comes to an end and the heirs or the executors of the deceased tenant are not entitled to remain in the premises.

The passage in *Lee & Honore* on which the learned trial Judge has based his judgment is as follows :—

“ 389. Effect of death of parties. In the absence of agreement to the contrary, the rights and duties of the lessor and of the lessee are (normally) transmitted on death to their representatives ; but a lease expressed to be at the will of either party is determined by that party's death.”

The authorities cited in support of this statement are Grotius 3.19.9, Voet 19.2.9 and *Ontwerp* 2603. Of these authorities I have not been able to get the last named work. Grotius's statement is as follows :—

“ But a person may also let for as long as he pleases, which letting is understood to expire by death, although other lettings, in which the time is fixed, are valid after the death of the lessee, and go over to his heirs.”

Voet's statement runs thus (Gane's translation) :

“ Then again in the second place the contract is either so made that it has an end at a definite time, say in one, two or five years ; or so that its duration is indefinite, “ as long ” for instance “ as the lessor should be willing ”. In such a case it has been held that on the analogy of a loan on sufferance it comes to an end both on the death of the lessor and on the announcement of an adverse intention being made by the lessor in his life-time.”

I am unable to find in any of these statements support for the view that on the death of a monthly tenant the tenancy passes automatically to his executor or executrix. Under our law (section 2, Prevention of Frauds Ordinance) a lease of immovable property, other than a lease at will, or for any period not exceeding one month, to be of any force or avail must be in writing and signed by the parties thereto in the presence of a notary and two witnesses and attested by such notary and witnesses. In the instant case it is not claimed by either party that there was an instrument of lease attested in the manner required by section 2 of the Prevention of Frauds Ordinance and it is common ground that the deceased held the premises on a monthly tenancy or in the words of our enactment on a lease for a period not exceeding one month. A lease for a period not exceeding one month commonly known as a monthly tenancy is renewed each month by tacit agreement. Such tacit renewal of leases is known to Roman Dutch Law. Voet states in *Book XIX, Tit. 2, S.9* :

“ To make this more perfectly plain you should know that not only express but also tacit leases are approved in law. On those lines if a lessee does not at all hand back the use on the completion of the time which was originally specified for the hiring, but persists in the

using without objection from the lessor, the lease appears to have been tacitly prolonged or renewed. It is renewed along with any obligation of pledge which the lessee had established over his own property in security of the original lease or rent."

According to the same author the renewal is on the same conditions as those on which the earlier hiring rested. This is how he puts it :

"Surely everyone is understood to have made a new hiring, so far as that could be done, on the same conditions as those on which the earlier hiring rested, when he continued in the hiring after the passage of the scope of time of the original contract."

In a monthly tenancy the lease is tacitly renewed on the first day of each month by the lessor not indicating to the tenant before that day that he wants to terminate the lease and the lessee remaining in the house without notifying the lessor that he proposes to quit. The terms of renewal must be taken to be the same each month unless they are changed by mutual agreement. It might be asserted that if the tenancy terminates at the end of each month there is no need for a month's notice of termination of tenancy either by the lessor or lessee, and that either party can on the last day of the tenancy inform the other that he will leave at the end of the day. But there is a reason behind the requirement of notice. The reason is that if a tenant is suddenly informed on the last day of a month that he will have to find another house on the next day he cannot do so. So the law requires that reasonable notice should be given of non-renewal of tenancy even if the lease expires at the end of each month. Our practice that the landlord or the tenant may terminate the tenancy or in the language of our common law, the letting or the hiring, as the case may be, in the case of a monthly tenancy upon a month's notice terminating on the date on which the period of tenancy expires is based on this requirement of the Roman-Dutch Law. Voet states the law thus :

"In like manner the law among us and in very many other countries stands nowadays so, that a hiring of a house or of male or female servants is held to have been prolonged after the end of the original period up to the next date for quitting by the silence of both parties. Definite times for quitting houses and definite terms for services let out by male and female servants are found to be fixed by statute or by long established usages. At the same time, as even toppers and barbers know, a need has been laid on for the giving of timely notice by those who at the end of the time of letting do not wish to avail themselves any longer of the use or services, or to render them for the future." (Book XIX, Tit. 2, S. 10, Gane's translation.)

Van Leeuwen too (*Censura Forensis*, Book IV, Ch. XXII, S. 14) holds the same view. He says :

"At the expiry of the terms of the lease, the letting and hiring comes to an end also, unless the owner of the estate allows the lessee to remain longer on the farm, in which case the lease itself is to be tacitly continued."

In the case of monthly tenancy there is no difficulty in determining the period for which the lease is tacitly continued but in the case of other leases the period will not extend beyond the period of reasonable notice required for terminating the lease that has tacitly come into being. On this point there appears to be some conflict of opinion between Van Leeuwen and Grotius and others whose opinions Grotius accepts; but it is not necessary for the purpose of the present case to go into the matter.

I now come to the question that arises for decision here. Did the tenancy of Cader devolve on his executrix on his death? I have stated above that a monthly tenancy is a contract of tenancy for a period not exceeding a month as shown in the calendar regardless of the number of days in a month. It expires on the last day of a month and is tacitly renewed by the silence and conduct of parties at the end of a month and the beginning of the next. What then is the position if, as in the instant case, a hirer dies after a month's tacit contract has commenced; but before the end of the month—Cader died on the 6th of March—As the contract was properly made though tacitly it will be in force for the term for which it was made, viz., the currency of the month and cannot at the end of that month be renewed tacitly if one of the contracting parties is dead. The contract therefore comes to an end at the end of the month in which the hirer dies and his heir or executor has no right to occupy the house thereafter except upon a fresh contract with the lessor or landlord whichever term we may choose to use. This I think is the effect of Van Leeuwen's statement (*Censura Forensis*, Part I, Book IV, Ch. XXII S. 18 (Barber's Translation)—

“ At the death of either of the parties the contract of letting or hiring is not terminated, but passes to the heirs both of the lessor and of the lessee until the time fixed arrives. ”

The term fixed in a monthly tenancy is the end of the month. Both according to Van Leeuwen (*Censura Forensis* Book IV, Ch. XXII, S. 1) and Voet (Book XIV, Tit. 2, S.1), the contract of letting and hiring is governed by almost the same rules as purchase and sale. According to these rules upon the death of a party there can be no tacit renewal of a contract and there can be no new contract between the executor or heir and the lessor unless such a contract is concluded between the parties.

Applying this view of the law to the facts of this case it would appear that Cader having died on 6th March 1951 the tacit contract of tenancy which began on 1st March came to an end on 31st March 1951 and as the defendant and the plaintiffs did not enter into a fresh contract of tenancy on 1st April 1951 or at any time thereafter the defendant had no right to occupy the premises and is not entitled to remain therein. The plaintiffs are therefore entitled to succeed in their action.

The defendant was entitled on the death of Cader to take advantage of section 18 of the Rent Restriction Act, but she does not appear to have done so. The time for giving the notice prescribed therein is long past and that section is now of no avail to her.

The appeal is allowed with costs both here and below. The plaintiffs are entitled to judgment as prayed for except that the date for computing the monthly damages will not be the date of Cader's death, but 1st April 1951. We direct that decree be entered accordingly.

PULLE, J.—I agree.

Appeal allowed.

