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Present: Dalton J.

DE SILVA *et al.* *v.* PERERA.

26—C. R. Colombo, 37,614.

Landlord and tenant—Increase of rent—Tenant declines to comply—Claim by landlord.

Where a landlord gave notice to his tenant increasing the rent and the tenant declined to pay the proposed increase of rent,—

Held, that the landlord was not entitled to claim the enhanced rent, unless the original contract provided for such a variation of its terms.

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

Thiagalingam (with *R. S. S. Goonewardene*), for defendant, appellant.

Garvin, for plaintiffs, respondent.

March 28, 1928. DALTON J.—

The defendant (appellant) is a monthly tenant of premises described as 12B, Gas Works street, Colombo. The plaintiffs are co-owners of an undivided half share in these premises. The total monthly rental is Rs. 60, half of which, by arrangement, has been paid by the tenant to the plaintiffs, and the remaining half to the other co-owners. On April 27, 1927, plaintiffs wrote the following letter to the defendant increasing their share of the rent from Rs. 30 to Rs. 42.50:—

Colombo, April 27, 1927.

W. William Perera,
No. 12B, Gas Works Street,
Pettah.

Sir,

Under instructions from Messrs. W. A. de Alwis, P. E. de Silva, and W. D. S. Peiris of Mutwal, I write to give you notice to pay my clients rent at the enhanced rate of Rs. 42.50 per month for their half share of rent of house No. 12B, Gas Works Street, from June 1, 1927, and Rs. 2.50 being fee for this letter of demand.

Yours faithfully,
(Sgd.) A. C. M. A. CADER.

The defendant declined to comply with the request. Nothing further appears to have been done thereafter by either party until July 15, when plaintiffs launched these proceedings to recover the sum of Rs. 42.50 rent alleged to be due for the month of June, in terms of the letter set out above. The defendant, amongst other things, pleaded that he had effected various improvements to the value of Rs. 550 under an agreement between the parties not to raise the rent for five years, and stated he was willing to pay the

enhanced rate if plaintiffs paid the sum of Rs. 275 being half share of the value of the improvements. That agreement was not, however, reduced to writing. He further offered, I understand, to pay the sum of Rs. 30 but this was refused.

It is not necessary further for me to deal with the arguments arising out of the plea of misjoinder of parties and causes of action. The only issue that I need deal with on this appeal is No. 2 which is conclusive of the matter, whether the defendant is liable to pay plaintiffs at the enhanced rate. On the basis that the amount claimed appears to be reasonable the learned Commissioner has answered it in favour of the plaintiffs. I am unable to agree that his decision is correct.

The relations between the parties are governed by the agreement between them. The tenant agrees to pay and the plaintiffs agree to accept a certain rent. The latter have no more right to enhance it than the former has to reduce it. This proposition has been adequately set out by Wille in his *Landlord and Tenant* in south Africa at page 55. The rent may be enhanced or reduced by the same method by which the original rent was fixed, namely, by mutual agreement between the parties. If the original contract provides for such variation, then such variation may be made in terms of the contract. In the same way each party, under the terms of the contract, may terminate the contract by legal notice to do so. There is no such notice here, what has been done being an attempt by one party to vary the terms of the contract. Defendant refused to agree to that variation; thereupon this action is brought to enforce it. It is urged that the judgment of Pereira J., in *Abdul Caffor v. Mohamed* [1] is an authority which supports the action of the plaintiffs.

All the facts are not set out in that judgment, but it does appear to have been a case of a monthly tenancy, and further that the landlord gave the tenant notice on December 23 increasing the rent as from January 1. It was contended for the landlord that that was sufficient notice to render the tenant liable to pay the increased rent, not as from January 1 but from February 1. The learned Judge disagreed with the contention. In the course of his judgment he goes on to state that the notice was bad for the reason that the time allowed was not sufficient, and he adds that a notice increasing the rent means that the tenant should either pay at the increased rent or quit the house.

I respectfully concur in the conclusion come to by the learned Judge, but I am unable to agree with his latter dictum which appears to have been unnecessary for the purpose of deciding the case, on the grounds that I have already set out. It does happen in practice on occasions that a demand for an increased rent is the

[1] *16 N. L. R. 383.*

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commencement of a fresh contract between the parties, the demand opening the negotiations and the increased amount asked for sometimes being eventually agreed upon by the parties in whole and sometimes in part only, as the rent thereafter payable by the tenant.

No authority has been cited to support this dictum in the judgment. Mr. Garvin has referred me to the learned Judge's *Laws of Ceylon* (*p. 675*) where there appears the following paragraph:—

> " As to increase of rent by notice, it has been held that the rent for use and occupation during the term the tenant overheld is not to be computed at the old rent, but is to be assessed at the fair value the use and occupation are worth, and that the increased rent mentioned by the landlord in his notice formed fair material on which to assess the rent for use and occupation."

Here it is first of all clear that the learned author is dealing with a tenant who is holding over. The present defendant is admittedly not in that position. Secondly, if one examine the authorities cited in support of this paragraph, it is clear that the tenant had been given proper notice to quit the tenancy under the agreement being duly terminated. In *Jacobs v. Ebert* [1] the tenant was given legal notice to quit, the notice adding that, in the event of his continuing the tenancy at the expiration of the notice, he should pay an increased rent of Rs. 50. On receipt of that, the tenant neither expressed assent or dissent to pay the increased rent but continued to occupy the premises after the termination of his tenancy under the original agreement. It was either therefore a case of his having assented to take the premises at the enhanced rent, or of being in the position of a tenant holding over after the termination of his term. As *Voet* points out (*Voet XIX. 2, 9, and 10*) in dealing with the subject of the tacit renewal of leases, every tenant who holds over at the expiry of the original contract is considered to have renewed his tenancy upon *so far as may be* (and stress must be laid upon these words) the same terms as the original hiring. This does not appear to differ materially from the English law relied upon by Clarence J., as laid down in *Mayor of Thetford v. Tyler*,[2] although it does not appear to me clear that English law is applicable.

The decision of Clarence J. was approved of however in *Carnie v. Muncherjee*,[3] which case in no way assists plaintiffs in their claim here, the facts being entirely different.

Under the circumstances I am satisfied that the notice of the plaintiffs here to enhance the rent not being accepted by the defendant was of no validity (see *Cardinal & Co.'s Trustees v. Miller* [4]) as against him. There has been no termination of the

[1] *6 S. C. C. 70.*
[2] *15 L. J. Q. B. 33.*
[3] *6 S. C. C. 100.*
[4] *3 Searle's Reports 45.*

tenancy, and the defendant is not liable for any one-sided variation made by the plaintiffs in the way of enhanced rent contrary to the terms of the agreement between the parties. The second issue should therefore have been answered in favour of the defendant. Plaintiffs would appear to be entitled to Rs. 30 but have refused it. It has not been paid into Court, but they raise no question on that ground. Presumably defendant is still ready to pay it.

The appeal must therefore be allowed and judgment entered dismissing plaintiffs' claim with costs in both Courts.

Appeal allowed.