

1955

*Present : Gunasekara J. and Sansoni J.*

**ANNAMALAI CHETTIAR, Appellant, and B. S. GREASY *et al.*,  
Respondents**

*S. C. 348—D. C. Kurunegala, 8,064*

*Rent Restriction Act, No. 29 of 1948—Section 13—Tender of rent—Landlord's refusal to accept it—Effect of such refusal—“Arrear of rent”—Section 27—“Landlord”.*

When, in a tenancy to which section 13 of the Rent Restriction Act is applicable, the landlord makes it clear to his tenant that he will not accept further payments of rent there is no obligation on the tenant to tender the rents as and when they fall due. The tenant, however, remains liable to pay the rent when demanded and must bring the arrears into Court when an action in ejectment is instituted by the landlord.

When a person purchases from a landlord rented premises to which the Rent Restriction Act applies he becomes the tenant's “landlord” by virtue of the definition of that term in section 27 of the Act.

**A**PPEAL from a judgment of the District Court, Kurunegala.

*H. W. Tambiah*, for the plaintiff appellant.

No appearance for the 1st defendant respondent.

*S. Sharvananda*, for the 2nd defendant respondent.

*Cur. adv. vult*

March 25, 1955. SANSONI J.—

The plaintiff purchased the premises in dispute on 23rd July, 1951, from the former owner who had rented them to the 1st defendant, who had in turn rented a portion of the premises to the 2nd defendant. On 30th August, 1951, the plaintiff through his proctors wrote to the 1st defendant to quit the premises on or before 1st November, 1951, as he required them "for his own business and occupation". It is quite clear from the evidence that the 1st defendant sent the plaintiff Money Orders in payment of the rent as it fell due for the months of August, September and October, 1951, but the Money Orders were returned by the plaintiff's proctors with their covering letter 1D3 dated 1st November, 1951. The reason given in that letter is that the plaintiff has not accepted the 1st defendant as his tenant and is filing action for ejection. This action was filed on 2nd November, 1951. The plaint set out only two grounds on which exemption from the statutory bar against ejection contained in section 13 of the Rent Restriction Act, No. 29 of 1948 was claimed—sub-letting, and requirement of the premises for the purposes of the plaintiff's trade and business. It is significant, however, that the money claim of Rs. 151·50 was "for use and occupation" of the premises for August, September and October, 1951 and not for arrears of rent; nor was it pleaded that the 1st defendant was the plaintiff's tenant. The 1st defendant in his answer pleaded that the action could not be maintained as the plaintiff had refused to accept him as a tenant and had refused to accept rent when it was tendered.

The action then took a strange turn. On 22nd April, 1953, an amended plaint was filed and certain new averments were made. The plaintiff now pleaded that the premises were required for the purpose of residence by the plaintiff's son; he also pleaded that rent was in arrear from August 1951 to 31st March, 1953 and accordingly claimed exemption from the provisions of sections 13 of the Rent Restriction Act. No objection appears to have been raised to these amendments nor was an amended answer filed. At least one interesting question that seemed to arise for discussion was therefore not put in issue. I refer to the new ground of non-payment of rent for the period subsequent to the filing of this action. It

was a ground which was non-existent at the time of institution, yet it was allowed to be brought in by way of amendment as an additional ground on which to claim exemption from the statutory bar already referred to. The learned District Judge held against the plaintiff on all grounds. The only matter that has been seriously pressed in appeal is the non-payment of rent during the period August 1951 to March 1953 : the only defence that can be raised to that, as the pleadings and issues stand, is that payment was rendered unnecessary by the plaintiff's conduct.

Dr. Tambiah urged that the 1st defendant should have tendered the rent as it fell due every month, and that his failure to do so rendered him liable to ejection on account of the rent being in arrears. He submitted that the refusal to accept rent indicated in the letter 1D3 did not absolve the 1st defendant from the obligation of tendering rent for the subsequent months. I do not agree. I construe the letter 1D3 as an election by the plaintiff not to accept his vendor's tenant as his tenant after he purchased these premises. Now although he was entitled to follow this course and could have sued his vendor's tenant in ejection under the law as it stood before rent restriction was introduced, the Rent Restriction Act introduced a new creature called a statutory tenant. Under the Act the ejection of the vendor's tenant is permitted only on one or more of the grounds specified in section 13 of the Act, and the plaintiff became the 1st defendant's "landlord" by virtue of the definition of that term contained in section 27 of the Act. It seems to have been thought, to judge by the letter 1D3, that when the plaintiff purchased these premises he became entitled to treat the 1st defendant as though he were a trespasser and no longer a tenant, but this was a wrong view to take and the plaintiff seems to have realized that when he filed his amended plaint. The letter 1D3 contains what is, to my mind, a repudiation of the 1st defendant's character as a tenant under the plaintiff and this, when coupled with the return of the rent, amounted to an unequivocal intimation by the plaintiff that any payment or tender for subsequent months would also be refused.

Weerasooriya J. in *Vadivel Chetty v. Abdu*<sup>1</sup> and Gratiaen J. in *Sideek v. Sainumbu Natchiya*<sup>2</sup> have held that when the landlord has made it clear that he will not accept further payments of rent there is no obligation on the tenant to tender the rents as and when they fall due. The rule has long been established that a party is not required to make a formal tender where it appears that the tender would have been mere form, and that the party to whom it was made would have refused to accept the money : see *Hunter v. Daniel*<sup>3</sup> and the authorities quoted by Gratiaen J. in *Wijeyesekera & Co. v. The Principal Collector of Customs*<sup>4</sup>. They refute the argument of Dr. Tambiah that there can be no waiver of a tender before the time for performance has arrived. The claim for ejection must therefore fail.

The 1st defendant still remained liable, however, to pay the rent when demanded and he should have brought the arrears into Court when this action was filed. Since he did not object to the amendment of the plaint he should have brought into Court the further arrears claimed

<sup>1</sup> (1953) 55 N. L. R. 67.

<sup>2</sup> (1951) 55 N. L. R. 367.

<sup>3</sup> 4 Hare 420—67 E. R. 712.

<sup>4</sup> (1951) 53 N. L. R. 329.

in the amended plaint. His failure to do so also deprives him of the right to claim his costs. While the learned District Judge was right in dismissing the plaintiff's claim for ejection he erred in dismissing the entire action with costs. He should have given the plaintiff judgment for the arrears of rent up to 30th April, 1953.

I would therefore set aside the decree appealed from and direct that a decree be entered ordering the 1st defendant to pay the plaintiff a sum of Rs. 1,110 being arrears of rent from 1st August, 1951 to 30th April, 1953. The plaintiff and the 1st defendant will bear their own costs throughout, but the plaintiff must pay the 2nd defendant his costs in both Courts.

GUNASEKARA J.—I agree.

*Decree varied.*