

1959

*Present* : Basnayake, C.J.

NANAYAKKARA, Appellant, and PABLIS SILVA, Respondent

*S. C. 67—C. R. Colombo, 66,188**Rent Restriction Act, No. 29 of 1948—Section 13 (1) (c)—Premises required by landlord to commence a new business—Maintainability of action in ejectment.*

A landlord who has no trade or business in existence is not entitled to maintain an action in ejectment in terms of section 13 (1) (c) of the Rent Restriction Act on the ground that the premises are required by him for the purpose of commencing a new business.

*Andree v. De Fonseka* (1950) 51 N. L. R. 213, not followed.

**A**PPEAL from a judgment of the Court of Requests, Colombo.

*H. W. Jayewardene, Q.C.*, with *S. L. D. Bandaranayake* and *L. C. Seneviratne*, for Defendant-Appellant.

*H. Wanigatunga*, with *A. K. Premadasa* and *R. D. B. Jayasekera*, for Plaintiff-Respondent.

*Cur. adv. vult.*

May 29, 1959. BASNAYAKE, C.J.—

The plaintiff-respondent (hereinafter referred to as the plaintiff) is the owner of premises No. 154 Hill Street, Dehiwela, also described as 154 Karagampitiya, Dehiwela. The defendant-appellant (hereinafter referred to as the defendant) is his tenant. The plaintiff avers in his plaint "the premises are reasonably required for occupation of the plaintiff and his family as well as for the purposes of the business of the

<sup>1</sup> (1956) A. C. 135.

plaintiff within the meaning of section 13 (1) (c) of the Rent Restriction Act". But the question whether the premises are reasonably required for the occupation of the plaintiff and his family was not raised as an issue nor was evidence offered on the point. Perhaps the plaintiff abandoned the claim that he wanted these premises for his occupation as he is the owner of several houses which he has given on rent and lives in a house of his own. The main issue before the Court was whether the premises were reasonably required by the plaintiff for the purpose of his business. The plaintiff is 64 years old, is married and has four children. His daughter is married and his eldest son is twenty-four years old. His other children are still in school. The plaintiff is a mechanic and was first employed in the Navy. After three years' service he joined the South Western Bus Company. About one and a half years before the institution of the action he left that employment and became a watch repairer. He has given up that occupation owing to failing eye sight and was at the date on which he gave evidence without an occupation. He asserts that he wants to run a tea kiosk in these premises with his eldest son. Before 1943 he ran a tea kiosk and sold pots and pans in these premises but he gave up that business and converted these premises at a cost of Rs. 7,000 into a bakery and leased them for ten years from 11th September 1943 at a rent of Rs. 30 to one Gurusinghe who carried on therein the business of a baker. While Gurusinghe's lease was subsisting the defendant came into occupation of the premises as his sub-tenant and remained there with the plaintiff's knowledge. On 30th March 1951 about two years before the expiry of Gurusinghe's lease the plaintiff and his wife by an instrument notari-ally attested agreed to lease these premises to the defendant at a monthly rent of Rs. 50 for a period of ten years commencing on 12th September 1953, the day after the expiry of the lease to Gurusinghe then current. It is common ground that the agreement to lease the premises to the defendant was given in consideration of an oral promise to give the plaintiff a sum of Rs. 8,000 to enable him to pay off the debt he incurred in 1943 for the improvements he effected to the building. After the execution of the agreement the defendant appears to have put off paying the sum of Rs. 8,000 on various pretexts, although the plaintiff kept on pressing him. Finally the plaintiff forced the defendant to give him the following written undertaking:—

" Swarnadesi Bakery

Hill Street, Dehiwela,

September 21, 1954.

I the undersigned D. V. Nanayakkara do hereby take over the business premises No. 154 belonging to Sampatha Waduge Pablis Silva on a monthly rent.

I have undertaken to pay back on behalf of Pablis Silva a sum of Rs. 8,000 being money borrowed by Pablis Silva, in instalments of Rupees Two thousand payable annually commencing from the month of November.

It is also agreed to deduct the rent of Bakery premises No. 154 (a sum of Rupees Fifty) from the sum of Rupees Eight Thousand.

I have agreed to the conditions set above and do hereby set my hand on a stamp of cents six in the presence of two witnesses.

A copy of this has been exchanged between the parties. ”

The plaintiff explains thus how the writing came to be given :—

“ I have been asking for Rs. 8,000 from the beginning and he was postponing all the time and when I finally threatened to file action he gave me this agreement. I did not file action earlier because he was always postponing saying that he will give me the money today or tomorrow etc. He has been putting me off from March, 1951, up to September, 1954. During this period March 1951 to September 1954 I did not think of doing any business because he promised to set off my debts. I thought of doing business only after he refused to pay me the Rs. 8,000 and so I thought I (would) do some business and make some money. ”

On 15th March 1954 the plaintiff instituted an action in ejectment and for cancellation of the agreement to lease against the defendant treating it as a lease and alleging that the defendant had committed a breach of its terms. The defendant resisted the action and also questioned the jurisdiction of the Court of Requests over the matter. The plaintiff's action was dismissed with costs on 25th August 1955. The instant proceedings were commenced on 3rd June 1957.

The defendant while admitting the execution of the above undertaking says that he did not abide by it as his Proctor advised him not to pay the money against the rent. The debt referred to was a mortgage debt of the plaintiff hypothecating his other property and not the premises in question. On the plaintiff's own evidence the conclusion that the plaintiff seeks to eject the defendant because the latter failed to give him the sum of Rs. 8,000 he promised is irresistible. He seeks to bring himself within the ambit of section 13 (1) (c) of the Rent Restriction Act, No. 29 of 1948, by stating that he wants to run a tea kiosk. A landlord cannot avoid the operation of the prohibition contained in that section by a mere statement on oath that the premises are required for the purpose of trade or business. He must place before the Court evidence sufficient to convince it of the truth of his claim. The section requires the Court to come to the conclusion that the landlord reasonably requires the premises for the trade or business of the landlord. In the instant case the plaintiff's evidence destroys his own claim. Even if he actually means to carry on a tea kiosk business in the premises he is not in law entitled to eject the defendant. Under section 13 (1) (c) of the Rent Restriction Act, No. 29 of 1948, a landlord who has no business in existence at the time he seeks to eject the tenant is not entitled to institute legal proceedings for ejectment on the ground that the premises are required by him for the purpose of his business. In my view the

words "for the purpose of the trade, business, profession, vocation or employment of the landlord" make this clear. Although the words of the Act of 1948 are slightly different from those of the corresponding provision in the Ordinance of 1942 and the word "his" has been replaced by the word "the" I think the provision still bears the same meaning. In *Mamuhewa v. Ruwanpatirana*<sup>1</sup> I held that a person who has no trade or business *in esse* at the time of the institution of the action was not entitled to maintain an action in ejection under the Rent Restriction Ordinance, No. 60 of 1942. Learned counsel for the respondent cited the cases of *Hameedu Lebbe v. Adam Lebbe*<sup>2</sup> and *Andree v. De Fonseka*<sup>3</sup> which take a different view, but I prefer to follow my previous decision.

I allow the appeal of the appellant and make order dismissing the plaintiff's action with costs both here and in the Court below.

*Appeal allowed.*

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