

1962

Present : H. N. G. Fernando, J.

F. LORENSZ, Petitioner, and S. L. M. ABDUL CADER,
Respondent

*S. C. 394—Application for Revision and/or Restitutio in
integrum in C. R. Colombo, 77793*

*Rent Restriction (Amendment) Act No. 10 of 1961—Section 13, sub-sections (1) and (3)
—Effect thereof—Invalidity of consent decree.*

The effect of sub-section 3 of section 13 of the Rent Restriction (Amendment) Act No. 10 of 1961 is that where an action of the kind referred to in this sub-section is pending on March 6, 1961, the Court would have no jurisdiction thereafter to enter a decree for ejection. This want of jurisdiction cannot be supplied even by the consent of parties.

APPPLICATION to revise an order of the Court of Requests, Colombo.

M. M. Kumarakulasingham, for defendant-petitioner.

M. T. M. Sivardeen, for plaintiff-respondent.

Cur. adv. vult.

January 15, 1962. H. N. G. FERNANDO, J.—

This action for the ejectment of the defendant from premises subject to rent control was instituted on 24th October 1960. The ground for ejectment was that the premises were reasonably required by the plaintiff for his own use and occupation. After Answer had been filed the parties reached agreement as to the conditions of ejectment and a Minute of Consent dated 24th May 1961 was filed in court whereby the parties consented to judgment as prayed for, writ not to issue until 31st August 1961. In consideration of the defendant's agreement to give vacant possession of the premises the plaintiff agreed to pay the defendant a sum of Rs. 3,000 and in fact that sum was paid and receipt thereof acknowledged by the defendant in the Minute of Consent. Thereafter the Judge made order for entry of decree accordingly.

Counsel appearing for the defendant in the application for revision made against this order of the Commissioner relies on section 13 of the Rent Restriction (Amendment) Act No. 10 of 1961. Sub-section 1 of that section provides that an action for ejectment shall not be instituted except upon one of the three grounds specified in that sub-section. The ground of requirement for occupation by the landlord is not one of the three grounds specified in that sub-section 1. Sub-section 3 then provides that where any action for ejectment instituted after 20th July 1960 on any ground other than one of those specified in sub-section 1 is pending in a court at the time of the enactment of the Amending Act, such action "shall be deemed at all times to have been and to be null and void".

The effect of sub-section 3 of section 13 of the Amending Act is that where an action of the kind referred to in this sub-section is pending on March 6th 1961 the court would have no jurisdiction thereafter to enter a decree for ejectment. This want of jurisdiction cannot be supplied even by the consent of parties. That being so, the Minute of Consent in pursuance of which the learned Commissioner ordered decree to be entered did not confer jurisdiction to order ejectment. The only order which the Commissioner could lawfully have made after March 6th, 1961 was to dismiss the plaintiff's action.

Subsequent to my reserving judgment counsel have informed me that the sum of Rs. 3,000 paid to the defendant was repaid to the plaintiff.

Acting in revision I set aside the order of the learned Commissioner. Decree will now be entered dismissing the plaintiff's action. I make no order as to costs.

Order set aside.