1963 *Present:* **Sansoni, J.**

D. MUTHUWEERA, Appellant, *and* MRS. G. C. CHANDRASOMA, Respondent

S. C. 122/1960—C. R. Colombo, 75,155

Rent Restriction Act (Cap. 274)—Section 13 (1) (c)— "Reasonable requirement"—Burden of proof.

Plaintiff sought to eject her tenant (the defendant) on the ground that the rented premises were reasonably required by her for her occupation as a residence. The Commissioner did not reject the defendant's evidence relating to his attempts to find alternative accommodation. Nor did he consider the evidence concerning the relative financial situations of the two parties. He gave judgment for the plaintiff solely on the ground that the defendant had failed to establish the truth of his charge that the action was instituted because of the refusal of the defendant to accommodate the plaintiff by giving her a certain premium which she demanded.

Held, that the Commissioner was guilty of serious misdirection by putting the onus on the wrong party. The question whether the plaintiff reasonably required the premises could not possibly be answered by asking oneself whether she also asked for a premium. It could only be answered after weighing the evidence led for either party, and seeing at the end whether the plaintiff has discharged the burden that lies on every plaintiff in a civil case

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

G. P. J. Kurukulasooriya, with *N. M. S. Jayawickreme*, for the Defendant Appellant.

H. W. Jayewardene, Q.C. with *L. Kadirgamar* and *E. St. N. D. Tillekeratne*, for the Plaintiff-Respondent.

Cur. adv. vult.

April 1, 1963. SANSONI, J.—

This is an action for rent and ejectment brought by a landlord against her tenant on the ground that the rented premises are reasonably required by her for her occupation as a residence within the meaning of Section 13 (1) proviso (c) of the Rent Restriction Act, Cap. 274. The tenant disputed the landlord's claim, but he lost in the lower Court and he has appealed.

The tenancy was entered into in May 1955. The rent agreed on was Rs. 99·50 a month, and there can be no question that it was paid regularly.

One matter of dispute between the parties was whether a sum of Rs. 3,600 was paid as a premium by the tenant to the landlord when the contract of tenancy was entered into. The learned Commissioner has held that it was, and his finding was not challenged before me. The tenant alleged that a further such sum was demanded from him by the landlord at the end of February 1958, payable at the expiry of three years from the commencement of the tenancy, his position being that he had paid the sum of Rs. 3,600 as the equivalent of 36 months' excess rent at the rate of Rs. 100 a month. The learned Commissioner has rejected the Defendant's evidence on this point. I have considered his Counsel's submissions, but I do not think I should interfere with this finding of fact either.

The only question left is whether the plaintiff has proved that the premises were reasonably required by her. I shall first set out the respective positions of the parties. The plaintiff owns, apart from the house in dispute, which bears assessment No. 95, 5th Lane, the adjoining house No. 97 which is occupied by a tenant who pays Rs. 600 a month. She has two houses in Sea Avenue which bring in Rs. 500 and Rs. 450 a month respectively. She also owns some semi-detached houses and tenements which between them bring in a monthly rent of Rs. 250. Her husband receives a monthly salary of Rs. 4,000. They have four children ; two of them are being educated in England, one is receiving medical treatment in England, and one child is in Ceylon where he attends a school in Colombo. The plaintiff has stated that a sum of Rs. 1,850 a month has to be remitted to England for the three children who are there. She has also stated that she has borrowed Rs. 60,000 from an Insurance Company for certain improvements to her house, and her other liabilities total about Rs. 10,000.

The defendant is a Government Servant drawing a salary of Rs. 702·35 a month. He is married and has no children of his own, but he is bringing up two children of his nieces: they are about 7 years old and attend school in Colombo. He has no property of his own, and he has said that he cannot afford to pay much more than he is doing as house rent. So much for the financial position of the respective parties.

The plaintiff, when she filed this action, was living in a house which had been lent to her and her husband, but in accordance with an undertaking which they had given they left that house pending this action and went into a flat in Sulaiman Avenue, Jawatte Road, paying a rent of Rs. 350 a month. Their landlord has given evidence for the plaintiff, and it is not suggested that they have to leave that flat. The defendant, on the other hand, has said that he has tried to find alternative accommodation

anywhere within Colombo Municipality, but all his efforts have been fruitless. The main obstacle, according to him, is that he has to pay key money of about Rs. 3,000 which he cannot afford to do.

The plaintiff's objections to living in the flat are that it has no spare room, that her child has no garden to play in, and that there is no suitable room in which she can entertain guests. If her husband entertains guests at a hotel, presumably for business reasons, his employers meet the bill. According to her landlord, the flat consists of two bed rooms, 17′ × 10′ and 14′ × 16′ respectively, a hall and dining room combined, a kitchen, a garage and a balcony 5′ wide and running the whole length of the building.

The defendant has given a detailed description of No. 95, 5th Lane. It has no garage. It has one bed room, 9′ × 15′ ; three small rooms which are about 8′ × 8′, a drawing room and dining room adjoining each other, no store room or servant's room, and a garden 25′ × 30′, which he says is below the road level and goes under water in rainy weather. I very much doubt if such a house is suitable for occupation by a person employed as the plaintiff's husband is ; and I find it very difficult to accept the plaintiff's statement that, out of the houses she owns, it is the most suitable for her occupation.

The learned Commissioner, after considering the reasons which the plaintiff gave for filing this action, has stated this in his judgment : " Unless the defendant satisfies Court that this requirement of plaintiff is mala fide and this action has been filed by plaintiff because of his refusal to accommodate her by giving her a further premium, I have no alternative but to hold that plaintiff requires the premises for her use and occupation as a residence ". I consider this a grave misdirection which virtually vitiates the ultimate conclusion to which he has come.

The question whether the plaintiff reasonably requires the premises cannot possibly be answered by asking oneself whether she also asked for a further premium. It can only be answered after weighing the evidence led for either party, and seeing at the end whether the plaintiff has discharged the burden that lies on every plaintiff in a civil case. If the defendant's charge had been established, he would have succeeded in showing that the plaintiff was not acting bona fide, and nothing more ; but he is also entitled to show that the plaintiff is not acting reasonably in requiring possession. She must show " a genuine present need " for the house and not be " moved by considerations of preference and convenience merely ". The fact that the defendant failed to establish the charge he made against the plaintiff cannot possibly affect the question whether the plaintiff reasonably requires this house, and although it is

unfortunate that the plaintiff may not be able to live in a house that belongs to her, that is a situation which is not uncommon in view of the protection which the Rent Restriction Act gives to a tenant by requiring the landlord to prove that the house she owns is " reasonably required " by her.

The plaintiff in this case has a flat for her occupation, and although she is only a tenant of it there is no suggestion that she holds it on a precarious tenure. I doubt if, apart from the garden, house No. 95 has any amenities that the flat cannot provide. The financial position of the plaintiff, when compared with that of the defendant, is so much better, that any hardship caused to the plaintiff by the higher rent she has to pay for the flat is more than set off by the hardship which would be caused to the defendant if he has to leave No. 95 without a suitable alternative as a residence, or if he has to pay key money for another residence.

Mr. Jayawardene asked me not to interfere with the learned Commissioner's order, and he cited the well-known case of *Coplans v. King* [1]. It was there held that Parliament deliberately made the County Court Judge in England the conclusive Judge on the question of hardship. But I cannot also ignore the later decision of the Court of Appeal in *Piper v. Harvey* [2], where Lord Denning said " It is undoubtedly the law that if it is just a matter of weighing the balance of hardship, that is a matter for the Judge himself who hears the case, and is not a matter in which this court can interfere. This court can only interfere if on all the evidence there is only one reasonable conclusion to be come to, or, alternatively, if the judge has misdirected himself on the facts or on the evidence. Hodson, L. J. agreed and made the following remarks : " The tenant has not been able to say anything more than the minimum which every tenant can say, namely, that he has in fact been in occupation of the bungalow, and that he has not at the moment any other place to go to. But he has not sought to prove anything additional to that by way of hardship in the way of unsuccessful attempts to find other accommodation, or indeed to raise the question of his relative financial incompetence as compared with the landlord ". This is just what the defendant in this case has done.

The Court of Appeal ultimately set aside the judgment of the County Court Judge in that case. I feel I should do the same thing here, chiefly because the learned Commissioner has been guilty of the serious misdirection to which I have already drawn attention, by putting the onus on the wrong party. He has not rejected the defendant's evidence relating to his attempts to find alternative accommodation and he has not considered what bearing the relative financial situations of the two parties should have on the main issue. If he had done so, I think he would have held that the plaintiff had failed to discharge the burden that lay on her.

I set aside the judgment under appeal and dismiss the plaintiff's action with costs in both Courts.

Appeal allowed.

[1] *(1947) 2 A. E. R. 393.*

[2] *(1958) 1 Q. B. D. 439.*