1946 *Present :* **Nagalingam A.J.**

HAMEED, Appellant, *and* ANAMALAY, Respondent.

187—C. R. Matale, 8,909.

Rent Restriction Ordinance—Right of lessee to eject tenant who is already in occupation of the premises leased—Meaning of "landlord"—Ordinance No. 60 of 1942, ss. 8 (c), 17.

A person who takes a lease of premises knowing that they are already in the occupation of a tenant holding under a prior contract of tenancy cannot avail himself of the provisions of proviso (c) of section 8 of the Rent Restriction Ordinance to eject the tenant on the ground that he requires the premises for his own use and occupation. For the purpose of proviso (c) a landlord must be defined as not only one who is entitled to receive the rent but also as one who has a *jus in re* in regard to the premises.

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

S. R. Wijayatilake, for the plaintiff, appellant.

H. W. Thambiah, for the defendant, respondent.

Cur. adv. vult.

December 18, 1946. NAGALINGAM A.J.—

This appeal raises a difficult question of law under the Rent Restriction Ordinance, No. 60 of 1942. The defendant had been for a number of years and was at the dates material to this action a monthly tenant of certain premises bearing No. 668 (Old) Trincomalee street, Matale, under the owner thereof, one Chelliah, at a monthly rental of Rs. 20. By indenture of lease P1 of December 11, 1944, Chelliah leased the premises for a term of five years commencing from January 1, 1945, to one Sainudeen Lebbe who by deed P2 of January 2, 1945, sub-leased the premises to the plaintiff for the entire term of his lease. The rental reserved both under the lease P1 and under the sub-lease P2 was the same amount that the defendant was paying under the monthly tenancy, namely, a sum of Rs. 20, with the difference that six months' rent had been paid in advance in each case at the execution of the lease and sub-lease. The plaintiff by virtue of the sub-lease in his favour continued to recover the monthly rents from the defendant from January, 1945, till date of action. On May 30, 1945, he gave notice to the defendant to quit and deliver possession of the premises to him on the ground that he "required the premises for his personal occupation to commence and carry on a trade or business." The defendant failed to quit and the plaintiff instituted this action.

The point of law that arises has been formulated in the following issue framed at the trial : " Can the lessee claim to have the tenant of the premises leased ejected under the Rent Restriction Ordinance on the ground that they are for lessee's use and occupation ? ". The object of the Rent Restriction Ordinance is not only to restrict the increase of rent, as is expressly set out in the title, but also to prevent proceedings in ejectment being taken against the tenant by terminating the tenancy by means of a simple notice. A reading of sections 3 to 7 of the Ordinance makes it plain that the rental of premises in areas to which this Ordinance applies cannot be increased excepting within certain limits prescribed by those sections. In other words, the right of a landlord to fix the rent of premises he lets in his absolute discretion is taken away from him. Section 8 of the Ordinance makes a further inroad into the rights of the landlord by curtailing very considerably his right to terminate the tenancy of the tenant. He could only do so if he could establish the existence of certain specified grounds set out in the section. The ground that need be examined for the purpose of this appeal is the following, viz., that "the premises are in the opinion of the Court reasonably required for occupation as a residence for the landlord or any member of the family of the landlord or for the purposes of his trade, business, profession, vocation or employment ".

The plaintiff contends that whatever the object of the Legislature may have been in enacting this Ordinance, the rights of parties are to be determined according to the plain meaning of the language used by the Legislature. Resort is had to the definition given in section 16 of the term " landlord ", which says that " in relation to any premises, the term landlord means the person for the time being entitled to receive the rent of such premises ", and it is said that after the execution of the sub-lease in his favour the plaintiff became entitled to receive the rent of these premises from the defendant and in fact did so for a period of six months prior to date of action and that therefore the plaintiff is the defendant's landlord in accordance with the definition and that the plaintiff is therefore one who is entitled to establish that the premises are reasonably required for the purpose of his trade or business, and hence to claim ejectment of the defendant from the premises on this ground. It would be obvious that if this contention is upheld the result would be to render the provisions of section 8 designed to safeguard the interests of the tenant a dead letter, for while a landlord may not in his proper person be able to institute an action for ejectment of his tenant on the ground that the premises are required not for himself but for a friend or relative of his, he could achieve his object by executing a lease in favour of the friend or relative, who would be able to claim ejectment by establishing that they are required for their own occupation.

Maxwell (9th edition, page 198) states the rule of construction that would be applicable to circumstances such as these as follows :—

> " Where the languago of a statute in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or

absurdity, hardship or injustice presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence."

Lord Selbourne expresses a similar view in the case of *Caledonian Rail Co. v. North British Rail Co.* [1]

> " The mere literal construction of a statute ought not to prevail if it is opposed to the intentions of the Legislature as apparent by statute and if the words are sufficiently flexible to admit of some other construction by which that intention can be better effectuated ".

Though the term " landlord " is no doubt given the definition set out above in the Ordinance, it is important to bear in mind that the definition is qualified by the words " unless the context otherwise requires ". In regard to the provisions of sections 3 and 7 of the Ordinance dealing with the control of rents, I have little doubt that the term " landlord " must be given its meaning as in the definition and that it would debar a person even in the position of the plaintiff from charging a higher rent than that permitted by these sections. The same interpretation may be placed on the term even in regard to the several provisions of section 8 other than proviso (*c*). But in regard to the construction of proviso (*c*) the definition of the term " landlord " as given in the Ordinance cannot be invoked, for otherwise the undoubted result, as shown above, would be to defeat the very object the Ordinance had in view in enacting this section.

The question, therefore, arises : What then is the proper meaning to be attached to the term " landlord " in proviso (*c*) ? It has been said that a purchaser of the premises from the landlord has been permitted to avail himself of the benefits conferred by this section and reference is made to the cases of *Raman v. Perera* [2] and *Edmund Appuhamy v. Samarasekera* [3] in both of which a purchaser from the previous owner instituted the action for the ejectment of the tenant on the ground that the premises were reasonably required for his occupation. In the first case the purchaser failed to secure relief but in the second he succeeded, but in neither of the cases was any question raised as regards the capacity of the purchaser to maintain the action. These cases, therefore, cannot strictly be regarded as authority for the proposition that a purchaser is entitled to the benefit of the provisions of section 8, proviso (c), but it is not without interest to note that in South Africa under the Rents Acts which are intended to secure the same objects as our Ordinance, it has been held that a purchaser from the previous owner who has received rent from the tenant and has been accepted by him as landlord is entitled to take advantage of similar provisions which enable the landlord to terminate the tenancy by proof that the premises are reasonably required for the personal occupation of himself (*Vide* Wille : Landlord and Tenant, 3rd edition, page 40). The position in Ceylon too would appear to be the same, for under our law a purchaser of land which is subject to a lease succeeds to all the

[1] *(1881) 6 A. C. 114 at 122.*
[2] *(1944) 46 N. L. R. 133.*
[3] *(1945) 46 N. L. R. 310.*

rights of the vendor on the lease without a special assignment of them by the latter to the former. See *Allis v. Sigera* [1] and *Silva v. Silva* [2]. But the case of a lessee of premises which are already subject to a lease or in the possession of the tenant is very different from that of a purchaser. Such a lessee has no rights excepting that of receiving rents as against the previous lessee or tenant. Wille (page 14) says :—

> "The owner of property which is subject to a lease conferring real rights on the tenant has obviously no title to grant an effective lease in favour of another person over the property or a portion of it for any period of time covered by the lease."

and the principle is also enunciated in the maxim "A hiring goes before a subsequent hiring". The lessee who obtains possession of the premises has a real right, a *ius in re*, while the lessee who does not obtain possession and who takes the lease with notice of the fact that a prior lessee is in occupation has only a *ius in personam*. See Wille pp. 126–131.

In the present case, the defendant was already in occupation as a tenant and he had a real right to the property, while the plaintiff who took a sub-lease with notice of the fact that the defendant was in occupation of the premises has no *jus in re*, and it seems to me that for the purpose of section 8, proviso (*c*) of the Ordinance, a landlord must be defined as not only one who is entitled to receive the rent but as one who has a *jus in re* in regard to the premises. The proposition thus stated would also furnish an adequate reason for holding that a purchaser is entitled to the benefit conferred by section 8, proviso (*c*) for a purchaser is himself one who has the *jus in re*.

In South Africa the question whether a second lessee or tenant is entitled to claim the benefit of the provisions of the corresponding section does not seem to have arisen, for though, as set out earlier, Wille refers to the case of a purchaser, he does not refer to the case of a subsequent lessee as against a first lessee.

I am therefore of opinion that the plaintiff is not entitled to take advantage of the benefits conferred by section 8, proviso (*c*) on a landlord in seeking to eject the defendant. The plaintiff's action was therefore rightly dismissed. For these reasons, the appeal fails and is dismissed with costs.

Appeal dismissed.