

1965 Present: Sansoni, C.J. and Sirimane, J.

A. J. M. FERNANDO, Appellant, and M. C. PONRAJAH,
Respondent

S. C. 28011961-D. C. Gampaha, 8469/L

Landlord and tenant-Termination of tenancy by abandonment-Requirement of proof of intention.

Where a tenant was compelled to leave the rented premises on account of riots-

Held, that the mere fact that the tenant left the premises could not terminate the contract of tenancy, unless he intended to abandon the premises.

APPEAL from a judgment of the District Court, Gampaha.

H. W. Jayewardene, Q.C., with L. G. Seneviratne, for Defendant-Appellant.

C. Ranganathan, Q.C., with B. J. Fernando, for Plaintiff-Respondent.

Cur. adv. vult.

December 9, 1965. **SIRIMANE, J.-**

The plaintiff was the tenant of premises No. 43 Main Street, Veyangoda, which belonged to the defendant. He had carried on business there as a trader for about five years prior to May 1958. On the 28th of that month he was compelled to leave the premises on account of the Communal Riots which broke out at about that time. The evidence shows that he barely escaped with his life. His entire stock-in-trade was looted, and the premises occupied by some of the rioters, who were turned out by the Police a few days later.

On leaving the premises the plaintiff wrote the letter P2 dated 2. 6. 58 to the defendant, in which he set out the circumstances in which he was compelled to leave, and repeatedly requested the defendant not to give this boutique to any outsider as he (plaintiff) would return as soon as times were favourable. The defendant sent no reply to this letter. Instead, he let the premises to the Singer Sewing Machine Company from July 1958.

The letter P2, which is a fairly long one, contains the folio wing sentence " Iftimes become favourable, and if this place remains to me I hope I could emerge from these difficulties." It was submitted for the defendant that it would be unreasonable to expect him to keep the premises for the plaintiff for an indefinite period of time, that the defendant was justified in drawing the inference that the plaintiff had abandoned the premises, and that therefore the contract of tenancy had ended. We are unable to agree.

The mere fact that a tenant leaves the premises does not terminate a contract of tenancy. As pointed out by Tambiah J. in *Premaratne v. Suppiah* [1 (1962) 64 N. L. R. 276.], a person cannot abandon a right without- intending to do so. On a reading of P2 as a whole, considered with the surrounding circumstances of this case, it is clear that the plaintiff never gave up his rights as a tenant.

The question of " justifiable abandonment " by a tenant (which would entitle the tenant to a remission of rent on the basis of a continuance of the contract) does not arise on the facts of this case.

The learned District Judge was therefore right in holding that the defendant was guilty of a breach of the contract and liable in damages.

The only question left to be determined is the quantum of damages. The trial Judge has found that the profits earned by the plaintiff out of the business he carried on in these premises is 300 Rupees per month. He has awarded that sum "Until the plaintiff is restored to possession ". Learned counsel for plaintiff-respondent conceded that it was impracticable for the defendant to restore the plaintiff to possession at this stage. He suggested that the plaintiff be awarded damages for a period of ten years. We think that would be excessive. Plaintiff could have reestablished himself within a period of about a year, if he chose to do so. The evidence further shows that the plaintiff had joined another business as a partner of a one fifth share in July 1959, and that his share of the profits for the ensuing year was a little over Rs 4,000.

We think that the damages at the rate of Rs. 300 per month for a period of one year would be reasonable.

The decree is varied by deleting the words "... .till the plaintiff is restored to possession of premises described in the schedule thereto ", and substituting therefor the words " till 31. 5. 59 "

Subject to this variation the appeal is dismissed with costs.

SANSONI, C.J.-I agree.

Appeal dismissed.

- End -