

Mrs. Jeramias Perera V. Mendis Appuhamy

574/1966

Present: T. S. Fernando, J.

MRS. R. A. JERAMIAS PERERA and others, Petitioners, and R. MENDIS APPUHAMY and another, Respondents

S. C. 474/66—Application for Revision in C. R. Colombo, 84193

Landlord and tenant—Eviction order obtained against tenant—Subsequent death of landlord—Order made by Court staying execution proceedings—Illegality.

Where, upon the death of a landlord, a Commissioner of Requests ordered stay of execution of an eviction order which had been obtained by the deceased against his tenant—

Held, that the Supreme Court had jurisdiction, in revision, to set aside the order made by the Commissioner in his discretion.

APPLICATION to set aside an order of the Court of Requests, Colombo.

V. Thillainathan, for the Petitioners.

H. Rodrigo, for the Respondents.

January 22, 1966. **T. S. FERNANDO, J.—**

The Respondents to this application, who were the unsuccessful tenants in the original tenancy action No. 84193, agreed, after their appeal to the Supreme Court had been dismissed, to vacate the premises in question by the 31st July, 1965 ; in other words, they were given about 5 months' time to vacate the premises.

Fortunately for them it would appear that the plaintiff who filed the tenancy action died before the end of July, 1965. The fortuitous

circumstance of the death of the original landlord made it possible for the present respondents to raise further arguments in an effort to keep possession of the premises beyond the date by which they had agreed to vacate the premises.

Exercising the jurisdiction of this Court available to set aside the order made by the Commissioner of Requests in his discretion, I set aside the order made by the learned Commissioner of Requests on the 9th November, 1965, by which he directed that the order staying execution of the original decree should stand. Further, I set aside also the order of the 20th October, 1965 by which the learned Commissioner directed the stay of execution proceedings. In the result, the present respondents, the defendants in the tenancy action, become liable to be ejected in terms of the order of 2nd March, 1965. That order, of course, stands and it is open to the present petitioners to seek to enforce that order.

The petitioners are entitled to the costs of this application.

Order set aside.