

1963 *Present: L. B. de Silva, J., and Abeyesundere, J.*

CASSIM HADJIAR, Appellant, and UMAMLEVVE and another,
Respondents

S. C. 341/1961—D. C. Batticaloa, 1595/L

Civil Procedure Code—Section 84—Date when decree nisi becomes absolute—Operation of law.

Where a decree *nisi* passed in terms of section 84 of the Civil Procedure Code was made absolute by the Court about eleven months after the expiration of 14 days—

Held, that, by operation of law, the decree *nisi* became absolute at the expiration of 14 days.

Rent Restriction Act—Notice to quit given when tenant is not in arrears of rent—Action in ejectment instituted subsequently on ground of arrears of rent—Validity of the notice to quit—Transfer of rented premises—Transferee not liable in respect of rents paid in advance to the transferor.

¹ 118 E. R. 261, (1891) 2 Q. B. D. 326.

² (1899) 2 Q. B. D. 536.

Where, at the time when notice to quit rent-controlled premises is given to the tenant, the tenant is not in arrears of rent, the landlord may nevertheless avail himself of the notice to quit if, at the time of institution of action subsequently, the tenant is in arrear of rent for one month after it has become due.

Where a landlord of rented premises transfers the premises to another and the latter sues the tenant thereafter in ejectment, the tenant is not entitled to set off as against the transferee any rent that had been paid in advance to the transferor.

APPEAL from a judgment of the District Court, Batticaloa.

C. Ranganathan, for Plaintiff-Appellant.

S. Sharvananda, for Defendants-Respondents.

October 9, 1963. L. B. DE SILVA, J.—

In this case the defendants were statutory monthly tenants under one Alim Hadjiar. Alim Hadjiar by deed No. 315 dated 1.8.1959 donated his life interest to the plaintiff. Thereafter, on 6.8.1959 the plaintiff sent the notice P2 to the defendants informing them of the execution of the deed of gift in his favour by the defendants' landlord Alim Hadjiar, and requesting the defendants to quit and deliver possession of the premises occupied by the defendants as such tenants to him on or before 1.10.1959.

The defendants by their letter P3 of 22.8.1959 accepted the position that the defendants were in occupation of the premises in question, but alleged that the premises did not belong to the plaintiff in view of the decree in D. C. Batticaloa, 1789.

The legal position in this case is that the original landlord has transferred the premises in question to the plaintiff, and the plaintiff has accepted the said transfer with tenants in possession and he has informed the tenants of the fact of the transfer and had given them a month's notice to quit. He has thereby implicitly accepted the position that he was accepting the premises with the defendants in possession as tenants and he was terminating the tenancy by giving notice.

The defendants, while denying the rights of the plaintiff, have refused to accept the plaintiff as their new landlord. The defendants are entitled to take up this position and refuse to acknowledge the transferee of their landlord as their own landlord, but in such an event the defendants are not entitled to claim any rights of tenancy from the plaintiff in this action, or even to claim the rights of a statutory tenant as against the plaintiff. In this case the defendants took up the position that the decree in D. C. Batticaloa, 1789 (Miscellaneous) was a bar to plaintiff's claim. The plaint, answer, decree nisi and decree absolute in that case have been produced marked D1, D1a and D1b. By the plaint D1 in that case Alim Hadjiar sued the defendants on 1.3.1957 for rent and

ejection. By their answer the defendants accepted the position that they were tenants of the plaintiff, alleged payment of all rents due, and payment of further rent in advance and asked for dismissal of the action.

The plaintiff failed to appear in Court and decree nisi was entered dismissing his action on 5.11.1958. As the plaintiff took no steps to have this decree nisi vacated, by operation of law under Section 84 of the Civil Procedure Code the decree nisi became absolute in fourteen days from 5.11.1958, but, in fact, the decree absolute had been entered by the Judge only on 20.10.1959.

The whole basis of the defence is that the decree absolute became effective only on 20.10.1959, being the day on which it was in fact entered and signed by the Judge. We are, however, of the view that by operation of law under Section 84 of the Civil Procedure Code the decree nisi became absolute after fourteen days of the 5th of November, 1958. It is conceded by Counsel for the respondent in this case that if we take this view the point of law urged on behalf of the defendants cannot be sustained.

The learned District Judge held that at the time the notice to quit was given the defendants were not in arrears of rent as it had been issued a few days after the plaintiff became the owner of the premises, and therefore held that the plaintiff was not entitled to give notice to quit as the defendants were not in arrears of rent at that stage. There is no provision under the common law that a landlord cannot terminate a monthly tenancy by notice if the tenants were not in arrears of rent, nor is there any provision in the Rent Restriction Act which prevents a landlord from terminating a tenancy by notice on that ground. The only provision in the Rent Restriction Act applicable to this case was that a landlord is not entitled to sue the defendants in ejection unless the defendants were in arrears of rent for a period of one month after the rent became due before the action was filed. In this case the defendants have paid no rent at all to the plaintiff and they were in arrears of rent for a period of over one month after the rent became due when the plaintiff filed this action. The defendants were thus not entitled to the protection of the Rent Restriction Act, even if they are considered to be statutory tenants of the plaintiff. The defendants allege that they had paid rent in advance to the plaintiff's predecessor in title, but under our law the defendants are not entitled to set off any such over-payment of rent as against the present plaintiff. If they had overpaid such rents to Alim Hadjar they will have a cause of action against him for recovery of such overpaid rent.

We, therefore, hold that the plaintiff is entitled to judgment as prayed for with costs. The judgment and decree entered by the learned District Judge are therefore set aside and we direct that judgment be entered for plaintiff as prayed for with costs. The plaintiff is entitled to the costs of this appeal.

ABEYESUNDERE, J.—I agree.

Appeal allowed.