

1948

*Present : Basnayake J.*

KANNANGARA, Appellant, and DAVID, Respondent.

*S. C. 57—C. R. Colombo, 7,534*

*Rent Restriction—Landlord temporarily finding other premises—Reasonable requirement—Section 8 (c), Ordinance No. 60 of 1942.*

The fact that a landlord, owing to the refusal of his tenant to give possession, has been able to find temporary accommodation is no ground for holding that the premises are not reasonably required by him for his residence.

<sup>1</sup> *Maitland's Essays*, p. 104—Cambridge University Press (1936).

**A**PPPEAL from a judgment of the Commissioner of Requests, Colombo.

*H. W. Jayewardene*, with *H. Samaranayake*, for the plaintiff, appellant.

*Vernon Wijetunge*, for the defendant, respondent.

May 17, 1948. BASNAYAKE J.—

The plaintiff instituted this action on June 17, 1947, against the defendant for a decree of ejection from premises No. 5, Frankfort Place, Colombo, and for damages at Rs. 71.50 per month from May 1 till the plaintiff is placed in possession thereof.

The defendant is an old lady with two unmarried adult sons, both of whom are employed, one in the India Corporation Ltd., and the other at Boustead Bros. At the date of this action she was living in Madras and her sons were occupying the premises in question. The plaintiff is a Government servant. He is married and has two children aged 3½ years and 2½ years respectively.

The plaintiff's evidence is that he is the owner of premises No. 5, Frankfort Place, Colombo, and that he gave the premises on rent to the defendant in January, 1946, at a time when he was stationed outside Colombo at the Walpita Government Farm. He owns no other house in Colombo. On August 1, 1946, he was transferred to Colombo and as he had nowhere to go he managed to get from one Dr. Jayawardena a house at Stafford Place in Colombo. It was a house which had been requisitioned by the Government and had been released at the time. Though not entirely suitable for occupation the plaintiff obtained it on the understanding that he would quit it within three months. The plaintiff, before giving formal notice to quit on January 30, 1947, explained to the defendant his plight. But the defendant refused to quit until she got her own house, No. 15, Dickman's Lane. Meanwhile Dr. Jayawardena instituted legal proceedings against him. On the advice of his lawyer he consented to judgment and asked for time to quit. In view of the plaintiff's unfortunate position, Dr. Jayawardena has agreed to withhold execution of his writ until this action is concluded. It appears that the defendant has also instituted legal proceedings to eject her tenant at No. 15, Dickman's Lane. That action is now pending.

The learned Commissioner has dismissed the plaintiff's action on the ground that the plaintiff has failed to discharge the burden that rests on him of proving to his satisfaction that the premises are reasonably required for his occupation. I find myself unable to agree with the learned Commissioner.

Section 8 (c) of the Rent Restriction Ordinance, No. 60 of 1942, permits the institution of proceedings for the ejection of the tenant of any premises to which the Ordinance applies and the entertaining of such proceedings by a court without the authorisation of the Assessment Board in a case where the premises are, in the opinion of the Court, reasonably required for occupation as a residence for the landlord. In the present instance the plaintiff knowing that he would not be able to obtain his own house at once, made other provision for his stay in Colombo

pending his recovery of possession of his own house. I do not see how that fact should affect his right to occupy his house for his own use. It was urged against him that he has consented to judgment being entered in the action by Dr. Jayawardena. But he says he did so on the advice of his lawyers, and he cannot be penalised for acting according to their advice. Having regard to the circumstances under which he obtained the house from Dr. Jayawardena, if the plaintiff had acted otherwise he would have forfeited the confidence of a person who came to his aid when he was badly in need of a house in Colombo. The plaintiff's conduct in consenting to judgment does not in my view affect the reasonableness of his request for his own house for which he has shown that he has a genuine need. As has been held in the case of *Aitken v. Shaw*<sup>1</sup>, the words "reasonably require" connote something more than desire although something much less than absolute necessity. The landlord must, as in the present case, have a genuine need for the house for his own occupation.

The case of *Neville v. Hardy*<sup>2</sup> supports the view that the fact that the landlord, owing to the refusal of the tenant to give possession, has had to obtain other premises where he is temporarily residing at the time of the hearing of the action, is no reason for holding that the dwelling house is not then reasonably required by the landlord as a residence for himself. In that case Peterson J. observes at page 408 :—

"In the present case the plaintiff desired the upper floors as a residence for herself, but finding that she could not get them she has taken other premises for her residence, but I do not think that the fact that she is at present living elsewhere is any reason for holding that the dwelling house is not reasonably required by her as a residence for herself or for persons in her whole-time employment. The evidence is that if she could obtain possession of these upper floors she would use them for the occupation of herself and her staff, and in those circumstances I cannot say that they are not reasonably required by her."

I set aside the judgment of the learned Commissioner and enter judgment for the plaintiff as prayed for with costs of both this appeal and the trial. The defendant is entitled to receive credit in the sum of Rs. 65 in deposit with the plaintiff.

*Appeal allowed.*

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