

APPELLATE CIVIL.

Before U Tun Byu and U Aung Tha Gyaw, JJ.

C. AH FONG AND ONE (APPELLANTS)

v.

EPHRAIM SOLOMON AND OTHERS (RESPONDENTS).*

H.C.
1948

Mar. 8.

Intermeddler—Renting property to third party—Payment of rent—Whether a defence against rightful owner.

The appellants, 2nd respondent and 3rd respondent and one Tanner were sued for compensation for use and occupation of a house. The 3rd respondent had taken possession of the same and let it out to appellants and 2nd respondent. The trial Court had decreed the claim against all. On appeal it was contended that the appellants were not liable for the period that rent was paid to the 3rd respondent.

Held: Rejecting such claim that such a plea cannot be set up against the rightful owner. Upon the admission that the property was taken from an unauthorized person the occupants are liable to pay standard rent.

U Zeya for the appellants.

M. Ahmed for the 1st respondent.

T. K. Boon for the 2nd respondent.

The judgment of the Bench was delivered by

U AUNG THA GYAW, J.—The two appellants C. Ah Fong and Sun Vin Leong and the 2nd respondent Chin Hone On and one J. S. Tanner, the 3rd respondent were sued in the City Civil Court by the 1st respondent, Ephraim Solomon, for recovery of Rs. 4,500 as compensation for the use and occupation of House No. 297/305, Godwin Road.

The plaint alleged that the 3rd respondent wrongfully and without the knowledge and consent of the

* Special Civil 1st Appeal No. 77 of 1947 against the decree of the Chief Judge of Rangoon City Civil Court in Civil Suit No. 2239 of 1947, dated the 11th November 1947.

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1st respondent took possession of the said properties and let out the same to the appellants and the 2nd respondent for the purpose of running a school known as Hwa Sha Chinese School. The appellants and the 2nd respondent admitted renting the properties from the 3rd respondent on his representation that the premises were in his charge through the President of the Jewish Trust, Rangoon, and that a monthly rent of Rs. 250 up to 31st March 1947 had been paid to the said respondent. They also pleaded that although the Rent Controller had fixed the standard rent at Rs. 500 per mensem they were liable to pay Rs. 470 only per month as from the 1st April 1947 as part of the premises known as No. 305, Godwin Road, was separately let out to one, Mr. A. Majee for a monthly rent of Rs. 30 by the 1st respondent.

The 3rd respondent filed a written statement stating that he was looking after the premises with a view to obtaining a lease from the owner when contacted and that he had conducted certain necessary repairs and paid all taxes due on the property from October 1945 to December 1946. He also admitted letting out the properties to the appellants and the 2nd respondent.

On the 11th November 1947, the date on which the judgment appealed from was passed the 3rd respondent did not put in his appearance, while Mr. Boon for the appellants and the 2nd respondent made certain admissions on behalf of his clients with the result that the judgment and decree now appealed against were passed. The brief Diary Order records that the written statement filed on behalf of the appellants and the 2nd respondent disclosed no defence and that all Mr. Boon wanted the Court to do was to exempt his clients from payment of rent for the period for which payment had already been made to the 3rd respondent, Mr. Tanner. This Mr. Tanner having admitted that

he was merely an intermeddler of the property of the 1st respondent, the appellants and the 2nd respondent who hired the premises from him for the purpose of running their school would appear to be rightly liable to pay compensation to the 1st respondent for the use and occupation of these premises. The right to a refund of the rent paid to an intermeddler cannot in law be pleaded against the rightful owner who claims this compensation for use and occupation from those who are in wrongful possession of the property.

Exception has been taken to the statement in the judgment passed by the lower Court to the effect that the written statement of the appellants and the 2nd respondent did not disclose any defence and attention is drawn to paragraph 4 of the written statement where they allege that they were liable to pay Rs. 470 monthly with effect from the 1st April 1947 on the ground that part of the premises known as No. 305, Godwin Road, was let out by the 1st respondent to a Tea Shop owner called Mr. A. Majee. On this point Mr. M. Ahmed for the 1st respondent has filed a certificate issued by the Rent Controller wherein it is stated that the rent fixed for the premises known as No. 297, Godwin Road, is Rs. 500 per mensem. The premises Nos. 297 and 305 appear to be separate from each other and the rent received from the tenant of No. 305, Godwin Road, cannot be taken into account in considering the application of the standard rent fixed for the separate premises known as No. 297, Godwin Road.

It might be that the act of trespass committed by the 3rd respondent was antecedent to and independent of his subsequent letting of the property to the appellants and the 2nd respondent. The question of his joint liability with the appellants and the 2nd respondent in respect of compensation claimed by the 1st respondent is a matter which does not call for

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consideration in this appeal. The appellants and the 2nd respondent admitted that they have rented the 1st respondent's property from an unauthorized person and that they are liable to pay the standard rent fixed by the Rent Controller whose certificate was produced before the learned Judge of the lower Court by Mr. M. Ahmed appearing for the 1st respondent.

There are therefore no substantial grounds whatsoever for interfering with the judgment and decree of the lower Court. This appeal will accordingly be dismissed with costs.