

## APPELLATE CIVIL.

*Before U Tun Byu and U Aung Khine, JJ.*

K. E. M. ABDUL MAJID (APPELLANT)

v.

M. A. MADAR AND TWO OTHERS (RESPONDENTS).\*

H.C.  
1949

June 23.

*Decree for possession—Judgment-debtors obtaining permit later—Under s. 12 (1) of the Urban Rent Control Act, 1948—Right to execute—Who can apply for permit—Tenant—Monthly Leases (Termination) Act, 1946—S. 4.*

*Held*: A decree-holder who has got a decree for possession cannot execute his decree against the judgment-debtors after the latter obtained a permit from the Controller of Rent under s. 12 (1) of the Urban Rent Control Act, 1948. An order passed in execution proceedings will come within s. 13 (1) of the said Act.

As the judgment-debtors had gone to India in 1941 December, the previous lease must be deemed to have been determined under s. 4, Monthly Leases (Termination) Act, 1946, with effect from the end of the month in which the lessee ceased to occupy the property. Subsequent occupation after the war cannot be considered as a continuation of the previous tenancy and the judgment-debtors could not be considered to be tenants, who could not apply for a permit under s. 12 (1) of the Urban Rent Control Act, 1948.

*Aung Min* (1) for the appellant.

*Dr. Thein* for the respondents.

The judgment of the Bench was delivered by

U TUN BYU, J.—M. A. Madar and K. O. Abdulla, on 23rd November 1948, obtained a decree for a declaration of their title to and for possession of a small piece of land, with the shed thereon, at No. 270, Thompson Street, Rangoon, against K. E. N. Abdulla and K. E. M. Abdul Majid in Civil Regular Suit No. 216 of 1947 of the Rangoon City Civil Court and they, on 26th November 1948, applied for the execution of the said decree in Civil Execution No. 725 of

\* Civil 1st Appeal No. 6 of 1949 against the order of the City Civil Court of the 2nd Judge in Civil Execution No. 725 of 1948, dated the 24th January 1949.

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1948 of the Rangoon City Civil Court. K. E. N. Abdulla and K. E. M. Abdul Majid, however, contended that the decree could not be executed against them in view of the fact that K. E. M. Abdul Majid had obtained a permit from the Controller of Rent under section 12 (1) of the Urban Rent Control Act, 1948. The question which arises appears to us to be simple, and it is—are the decree-holders M. A. Madar and K. O. Abdulla entitled to execute their decree which they obtained in Civil Regular Suit No. 216 of 1947 in view of the provisions of sections 12 and 13 of the Urban Rent Control Act, 1948. The relevant portions of sections 12 and 13 are as follows :

“ 12. (1) In any area or in respect of any class of premises to which the President may, by notification, declare this section to apply, any person, not already being a tenant of any premises, but being in occupation of such premises *bona fide* for residential or business purposes, may make application to the Controller to be permitted to continue in occupation of such premises, and the Controller shall, on the applicant making a written declaration of his willingness to pay the standard rent of such premises, issue a written order to the said applicant permitting him to continue in occupation of the said premises and shall send a copy of his order to the landlord, or his authorized agent, if his whereabouts are known.

(2) Subject to any orders passed by a Court under section 13 every order passed under sub-section (1) granting permission to any person to continue in occupation of any premises shall remain in force for so long as the provisions of this section apply to the area in which the said premises are situated or the class of premises within which the said premises come and for three months afterwards :

Provided that if during this period a person in whose favour an order has been passed shall voluntarily vacate the premises the Controller may, on the written application of the landlord, cancel such order and shall not thereafter renew it.

13. (1) Notwithstanding anything contained in any other law, no order or decree for the recovery of possession of any premises which any person has been permitted to occupy under

the provisions of section 12, or for the ejection of any such person therefrom shall be made or given unless—

- (a) any rent lawfully due from such person in respect of any period subsequent to the grant to such person by the Controller of permission to occupy the said premises has not been paid to the landlord or deposited with the Controller under section 14B after written demand for payment of such rent has been sent to such person by registered post and has not been complied with for seven days from the date of such demand ; or
- (b) such person or any person residing with him has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose or the condition of the premises has in the opinion of the Court deteriorated owing to acts of waste by or the neglect or default of any such person ; or
- (c) the premises are reasonably and *bona fide* required by the landlord for occupation by himself or by any member of his family or for the occupation of any person for whose benefit the premises are held or for any other purpose deemed satisfactory by the Court and the landlord executes a bond in such amount as the Court may deem reasonable that the premises will be occupied by himself or by such member or person or that he will give effect to such purpose within such period as the Court may prescribe ; or
- (d) the order granting such permission has been cancelled under the proviso to section 12 (2)."

It will be observed that sub-section (2) of section 12 cannot apply in the present case as the provisions of section 12 are still in force in Rangoon.

We are also unable to see anything on the record which will bring the present case under any of the four clauses in sub-section (1) of section 13 of the Urban Rent Control Act. It also appears to us to be clear

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that no order for possession of any premises can now be made in view of the provisions of section 13 (1) unless it is a case which can be brought within one of the four clauses in sub-section (1) of section 13, and an order passed in an execution proceedings will, in our opinion, come within the provisions of section 13 (1) of the Urban Rent Control Act.

It has been contended, however, on behalf of the decree-holders that the defendant-appellant K. E. M. Abdul Majid is still a tenant within the meaning of clause (g) of section 2 of the Urban Rent Control Act, 1948, and that he was accordingly not a person who was entitled to apply for a permit under section 12 of that Act. It is not disputed in this case that K. E. M. Abdul Majid and K. E. N. Abdulla were tenants of the premises in question in 1941. It appears that K. E. M. Abdul Majid was in India at the time the war was declared against Japan in December 1941 and that K. E. N. Abdulla also left for India some time after the war was declared against Japan. According to K. E. N. Abdulla, he left two assistants named S. M. Aliar and Kader Mohideen to take charge of the premises for him but his statement and the evidence produced by him for this purpose had been disbelieved by the learned 2nd Judge of the Rangoon City Civil Court who held, in the main case, that the tenancy of the premises in question had been terminated in December 1941, when K. E. N. Abdulla abandoned it and left for India. The subsequent occupation of the premises in Thompson Street by K. E. N. Abdulla and K. E. M. Abdul Majid after the British reoccupation of Burma could not therefore be considered to be an occupation which was in continuation of the tenancy created before the British evacuation of Burma in 1942. Thus, neither K. E. N. Abdulla nor K. E. M. Abdul Majid could be considered

to be a tenant within the meaning of clause (g) of section 2 of the Urban Rent Control Act after the decision in the main case had been passed. It will also be convenient to reproduce the provisions of section 4 of the Monthly Leases (Termination) Act, 1946, which is :

“ 4. Notwithstanding anything contained in any law for the time being in force, if a lessee ceases to occupy or be in possession of an immovable property by reason of the occupation by the enemy of the place where the immovable property which is the subject of a lease is situate, the lease of such immovable property shall be deemed to have been determined with effect from the end of the month in which the lessee so ceased to occupy or be in possession of the property.”

K. E. M. Abdul Majid could not accordingly be considered to be a tenant at the time he applied for or obtained the permit of the Controller of Rent under section 12 (1) of the Urban Rent Control Act, 1948. The order of the learned 2nd Judge of the Rangoon City Civil Court passed in Civil Execution No. 725 of 1948 will accordingly be set aside, and the appeal is allowed with costs, advocate's fee three gold mohurs.

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