LALITHA PERERA

v.

PADMAKANTHI

SUPREME COURT.
WANASUNDERA, J., L. H. DE ALWIS, J. AND SENEVIRATNE, J.
S.C. APPEAL 80/85.
C.A. No. 205/80(F).
OCTOBER 9, 1986.

Landlord and tenant–Change of ownership–Election of new owner to recognise defendant as tenant–Attornment–Failure to attorn.

Attornment is the act of the tenant putting one person in place of another as his landlord. In any attornment the tenant acknowledges the landlordship of a person other than his original landlord.

Where the tenant continued to occupy the premises let to him without attorning to the new owner despite being noticed by his former landlord to do so, he (that is the tenant) is liable to be sued in ejectment. The defence that the tenant had not received notice of the change of ownership was false in the face of documentary proof and proceedings before the Conciliation Board supporting the fact of the new owner's election to recognise him as the tenant. The proved payments of rent to the former landlord and the Town Council of Maharagama also showed the tenant to be in arrears of rent. The tenant was therefore liable to be ejected.

Cases referred to:

(1) *Meeruppe Sumanatissa Terunanse v. Warakapitiya Pangananda Terunanse–(1968) 70 NLR 313.*

(2) *De Alwis v. Perera–(1951) 52 NLR 433 (DB).*

(3) *Sabapathypillai v. Ramupillai–(1956) 56 NLR 367.*

(4) *David Silva v. Madanayake–(1967) 69 NLR 396.*

(5) *Punchi Nona v. Hendrick Perera–(1968) 73 NLR 430.*

(6) *Fernandes v. Perera–(1974) 77 NLR 320 (DB).*

(7) *Mensina v. Joslin-Sri Kantha Law Reports Vol. 1 p. 76.*

APPEAL from judgment of the Court of Appeal.

Nimal Senanayake, P.C. with *M. A. Q. M. Ghazali* and *Mrs. A. B. Dissanayake* for appellant.

Ikram Mohamed with *Wijedasa Rajapakse* for respondent.

Cur. adv. vult.

February 6, 1987.

SENEVIRATNE, J.

The plaintiff-respondent-respondent in this appeal Anula Padmakanthi has filed this action on 16.3.78 in terms of section 22(1) of the Rent Act, against the defendant-appellant-petitioner for ejectment of the latter from the premises 425, High Level Road, Navinna, Maharagama, on the ground that the latter was in arrears of rent for a period of over three months. The case of the plaintiff was that the defendant was originally the tenant of the premises of her father Wilson Fernando. Wilson Fernando by Deed of Gift No. 515 of 4.12.74 (P1) gifted the premises to the plaintiff, his daughter. After the gift to the plaintiff, her father, the said Wilson Fernando sent letters dated 3.1.75, 4.5.75 and 11.5.75 to the defendant informing her that he had transferred the property to his daughter, Padmakanthi, and requesting the defendant to pay rent to her. Of the letters referred to above only the letter dated 11.5.75 (P3) sent by Wilson Fernando to the defendant, and the postal receipt (P3A) were produced at the trial. The case of the plaintiff was that, though informed by her father to pay rent to her, the defendant did not pay any rent to her, and that she was in arrears of rent for over three months. As such through her Attorney-at-law, by letter dated 30.5.77 (P5) the contract of tenancy of the defendant was terminated on the ground of arrears of rent from January 1975 to May 1979 a period of 27 months, and further the defendant was given notice to quit the premises and to give vacant possession of the premises on or before 31.8.77. As the defendant did not comply with the notice (P5) the plaintiff has filed the present action.

The defendant filed answer on 28.8.78, and stated that she was unaware of the transfer of the premises to the plaintiff by her landlord Wilson Fernando. She denied having received any request from Wilson Fernando her landlord to pay rent to the plaintiff. She denied that she was in arrears of rent, and stated that she has deposited rents due with the Town Council, Maharagama.

On these pleadings the question which arose was whether the defendant had attorned to the plaintiff as her tenant, after the premises was transferred to the plaintif by deed of 4. 12. 74 (P1). At the trial the main issue (No. 2) that was raised by the plaintiff was as follows:

"Has the plaintiff's father Wilson Fernando by letter dated 3.1.75 sent by the Notary Mr. Kaluaratchi, and thereafter by letter dated 11.5.75 sent by him requested the defendant to attorn to the plaintiff?" (See page 26 Brief).

The letter referred to in the issue is the letter dated 11.5.75 (P3) written by E. Wilson Fernando the defendant's landlord, to the defendant as follows:

"I am now not the owner of premises No. 245, Navinna Road of which you are the occupant (tenant). From January 1975, I have transferred the ownership of the premises to my daughter Anula Padmini. The deed was attested by Notary Kaluaratchi who also informed this to you. As such from January 1975 do not pay the rent to me, pay to my daughter."

It is strange that the parties have not specifically raised the issue arising from Issue No. 2, that is, whether the defendant attorned to the plaintiff. Further, neither party has specifically raised the issue–whether the defendant was in arrears of rent for over three months at the time the notice to quit dated 30.5.75 (P5) was issued.

At the trial the main defence taken by the defendant was that she was not informed either by her landlord Wilson Fernando or by the plaintiff of the change of ownership, and that in any case she had not become aware of such a transfer. As the defendant was not requested to attorn to the plaintiff, she has not done so. She always considered the plaintiff's father Wilson Fernando as her landlord. The evidence shows that the plaintiff herself had not informed the defendant of the transfer to her and called upon the defendant to attorn to her and pay the rent to her.

The learned District Judge held that:

(1) that it was proved that the father of the plaintiff informed the defendant by registered letter of 11.5.75 (P3) of the change of ownership, and requested the defendant to pay the rent to the plaintiff.

(2) the learned District Judge held that in any event the complaint by the plaintiff to the Conciliation Board made on 10.4.75 (P6), in respect of which complaint there was an inquiry by the Conciliation Board on 18.5.75 (P4), would also have made the defendant become aware that the plaintiff was the owner of the premises, and was claiming to be the landlord.

The plaintiff's complaint to the Conciliation Board dated 10.4.75 (P6) was that she became the owner of the premises by a deed executed on 4.12.74, and that her father by letter dated 3.1.75 informed the defendant of the transfer and to pay rent to her and that the defendant has not done so. As such she requested the Conciliation Board to obtain for her the possession of the said premises. There is no doubt that as stated by the learned District Judge the defendant became aware of the transfer at least through the Conciliation Board proceedings.

(3) the learned District Judge held that the defendant had not paid rent to the plaintiff and was in arrears for over three months at the time the notice to quit dated 30.5.75 (P5) was sent.

On these findings of fact the learned District Judge answered issue No. 2 referred to above and other issues raised by the plaintiff in favour of the plaintiff and gave judgment for the plaintiff.

There was an appeal to the Court of Appeal, and the Court of Appeal dismissed the appeal upholding the judgment of the learned District Judge, both on grounds of facts and law. The defendant-appellant has now come by way of appeal to this Court. The learned counsel for the defendant-appellant made submissions, both on facts and on law, to wit that the concurrent findings of fact both in the District Court and the Court of Appeal were in error, and that the conclusion on the law by both the Courts was also erroneous.

There is no reason to interfere with the concurrent findings of fact that the plaintiff's father Wilson Fernando informed the defendant by registered letter of 11.5.75 (P3) that he had transferred the premises to his daughter the plaintiff, and requested the defendant to pay rent to the plaintiff. In other words, Wilson Fernando has informed the defendant to consider his daughter the plaintiff in this action as her landlord in future. The term "attornment" has been judicially defined– "As the act of the tenant putting one person in place of another as his

landlord"–Lord Devlin in *Meeruppe Sumanatissa Terunanse v. Warakapitiya Pangananda Terunanse* (1). This means that in any attornment the tenant acknowledges the landlordship of a person other than his original landlord. By writing the letter (P3) of 11.5.75 Wilson Fernando terminated his contract of landlord and tenant with the defendant.

The submission on law made on behalf of the defendant-appellant in this appeal is that even though (P3) of 11.5.75 terminated the contract between Wilson Fernando and the defendant, there was no creation of a contract of landlord and tenant between the plaintiff and the defendant, as the plaintiff did not call upon the defendant to attorn to her, and the defendant had not at any time attorned to the plaintiff as her landlord. Factually it is correct to state that the plaintiff herself did not request the defendant to attorn to her. On the facts of this case though Wilson Fernando sent the said letter of 11.5.85 (P3) to the defendant, the defendant ignored that letter and continued to pay rent directly to Wilson Fernando and later began to deposit the rent in the name of Wilson Fernando with the Town Council, Maharagama.

One striking feature in this case is that the letter of 11.5.75 (P3) is a letter written to the defendant by the father of the plaintiff to attorn to the latter. It is not the case of Wilson Fernando having sold the premises to an outsider, and then informing the defendant to attorn to that new purchaser. Wilson Fernando was the father of the plaintiff and his action may even be considered as that of an agent of the plaintiff. The complaint to the Conciliation Board by the plaintiff, and the inquiry which followed can also be constituted as factors which gave the defendant constructive notice to attorn to the defendant. The learned District Judge was correct in coming to the conclusion that the defendant had received sufficient notice to attorn to the plaintiff.

Thus, the position arising from these findings is that the defendant has continued to occupy the premises without attorning to the plaintiff when noticed to do so. This is an instance in which the legal principles decided in the following cases apply to the situation. In the leading case of *De Alwis, appellant and Perera, respondent* (2) Gratiaen, J. in the course of the judgment dealt with the aspect of contract of landlord and tenant relevant to this case Gratiaen, J. had held as follows:

> "Finally, there is the position arising where the purchaser elects to recognise the tenant, but the tenant does not specifically attorn to him. Sampayo, J. took the view–'but not without some

hesitation'–16 N.L.R. at page 317 that in such a case the purchaser would enjoy the right not only to claim rent but also to sue for damages and ejectment. In 18 N.L.R. 168, the earlier ruling was reaffirmed".

In the case of *Sabapathypillai, appellant and Ramupillai, respondent* (3)–Weerasooriya, J. held that–

"when leased premises have been sold by the landlord, the tenant who receives notice of the purchaser's election to recognise him as tenant is not entitled to deny his attornment to the purchaser if he continued to be in occupation without informing the purchaser that he does not elect to attorn to him. It would therefore, seem that a tenant who remains in occupation with notice of the purchaser's election to recognise him as a tenant may legitimately be regarded as having attorned to the purchaser so as to establish privity of contract between them."

The above principle was affirmed in the case of *David Silva v. Madanayake* (4) which held that when a landlord sells the premises which have been rented by him, if the tenant elects to remain in occupation of the premises he is bound to pay rent to the purchaser if the purchaser calls upon him to do so. In such a case, if the tenant, or his licensee, refuses to recognise the purchaser as his landlord and continues to remain in possession of the premises, without paying rent, the purchaser is entitled to maintain an action for ejectment of the tenant. In this case Samarawickrema J. held as follows:

"After he was informed of the transfer to the plaintiff and was called upon to pay rent to him, the tenant continued to be in possession in the same manner. As stated in the authorities, it was not open to him to remain in possession of the premises and to refuse to recognise the plaintiff as his landlord and pay rent to him."

This same principle was later followed in the case of *Punchi Nona v. Hendrick Perera* (5) in which case Wijayatilake, J. following the earlier decisions held as follows:

"It is now a well established principle that a tenant who remains in occupation with notice of the purchaser's election to recognise him as a tenant may legitimately be regarded as having attorned to the purchaser so as to establish privity of contract between them."

This case mainly dealt with the burden of proof of attornment, i.e. as to which party should prove attornment. It is in the course of this decision that Wijayatilake, J. set down the principle referred to above. As such the Law Report sets out the part of the decision cited above as having been made obiter.

The plaintiff's case was that three letters dated 3.1.75, 4.5.75 and a registered letter dated 11.5.75 (P3) (Postal Receipt P3A) were sent to the defendant informing her of the donation to the plaintiff and requesting her to pay rent to the plaintiff. The defendant has denied, the receipt of all these letters, and any knowledge of such a transfer. Issue No. 2 raised at the trial pertains to this denial. The learned District Judge has held that the defendant has received notice and in the judgment comments as follows:

> "Under cross-examination the defendant was seen to be very uncomfortable and unable to reply to the questions put to her by the plaintiff's Attorney in respect of the letter drafted by the Notary Mr. Kaluaratchi (P1 & P2A) at the instance of the plaintiff's father regarding the change of ownership. Ultimately the defendant stated for the first time in this case that she had not received any letter according to the registered articles (P2). Again, as regards the letter dated 11.5.75 (P3) and (P3A) sent by registered post to her by the plaintiff's father the defendant could give no satisfactory explanation."

Thus in view of the letters referred to and the proceedings in the Conciliation Board, the defendant can be deemed to have received notice of the donee's (plaintiff's) election to recognise her as the tenant of the premises she has continued to occupy.

As regards the payment of rent the defendant has not paid rent regularly even to Wilson Fernando whom she recognised as her landlord. Even the deposits of rent at the Maharagama Town Council showed that the defendant was in arrears of rent. Ultimately, the learned trial Judge held that when the notice to quit was sent to the defendant on 30.5.77 (P5) the defendant was in arrears of rent for over three months, to the plaintiff.

This defendant has no defence except a false denial. This is not an instance as in the case of *S M. J. Fernandes, appellant and W. R. S. Perera and Another, respondent* (6) in which case the tenant did not want to pay the rent to the new owner, as there was a dispute between the new owner and the person to whom he was already

paying rent for the previous 18 years, regarding the title to the premises. The case of that defendant always was that he was prepared to pay rent to the person who was legally entitled to be his landlord. The Supreme Court held that the plaintiff in the action was the legal owner after the demise of the previous landlord, and as such the 1st defendant must be considered to have attorned to the plaintiff. In the case of *Mensina v. Joslin, plaintiff respondent* (7) the landlord sold the premises occupied by the defendant to a third party. The defendant tenant refused to attorn to the purchaser disputing the latter's title. Thus, there was a reason though held by the Court to be an invalid one, for the existing tenant not to pay rent to the new owner. In this present case the defendant has without any valid or invalid excuse not attorned to the plaintiff and not paid rent to the plaintiff, the new legal owner. When sued by the plaintiff for ejectment on grounds of arrears of rent, a false defence has been set up by the defendant.

I agree with the judgment of the learned District Judge affirmed by the Court of Appeal, and I dismiss this appeal with costs.

WANASUNDERA, J.—I agree.

L. H. DE. ALWIS, J.—I agree.

Appeal dismissed.