BHOJRAJ
v.
ABDULLA

COURT OF APPEAL
WEERASEKERA, J.,
WIGNESWARAN, J.
C.A. 675/88
D.C. MT. LAVINIA 680/RE
OCTOBER 2, NOVEMBER 26, JUNE 24,
APRIL 01 AND
MAY 05, 1997.

Rent Act 7 of 1972 – S. 22 (2) b and S. 37 – Privity of contract – Hire goes before sale – 'Huur Gaat Voor Koop' – Right of Management and Administration of Minors property – status of natural guardian.

The plaintiff-respondent filed action seeking to evict the defendant-appellant from the premises in suit on the ground of reasonable requirement. The defendant-appellant contended that his contract of tenancy was with the minor daughter of the plaintiff on whose behalf the plaintiff-respondent collected rent, and that the plaintiff-respondent had no right to institute this action; Judgment was given in favour of the plaintiff-respondent.

On Appeal –

Held:

(1) The defendant-appellant was in occupation long prior to the purchase by the minor daughter in 1971. The purchaser can be safely inferred to have purchased with the defendant-appellant tenant in occupation.

(2) It is an established principle of the Roman Dutch Law that 'hire goes before sale', thus a purchaser steps into the shoes of his seller as regards an existing lease by operation of law.

(3) Natural guardianship carries with it the right to receive payment of a debt on behalf of the minor from a creditor of the minor. Such guardianship entitles the father to the full administration and management of the property.

(4) Rents had been paid by the defendant-appellant and receipts issued on behalf of the minor daughter, the landlord as her agent. This did not create a privity of contract of tenancy between the defendant-appellant and plaintiff-respondent and could not have given rise to an inference to displace the legal principle 'Huur Gaat Voor Koop'.

Weerasekera, J.,

> "In my view after the purchase and after the declaration the privity of contract between the minor daughter and the defendant-appellant had been sealed and completed, it meant that the defendant-appellant elected to accept the minor daughter as the landlord, tendered his rents to Abdulla as the person who collected rents on behalf of the landlord minor daughter, and issued rent receipts on behalf of the landlord. That being so the defendant-appellant would in fact and in law be estopped from denying his acceptance of the minor daughter the new purchaser as his landlord".

APPEAL from the Judgment of the District Court of Mount Lavinia.

Cases referred to:

1. *David Silva v. S. K. Madanayake* – 69 NLR 396.
2. *Eileen Prins v. Marjorie* Patternott – BALJ 1995 Vol. VI – Part 1 – 41.

P. A. D. Samarasekera, PC with *R. Y. D. Jayasekera* for defendant-appellant.

A. K. Premadasa, PC with *Gamini Thilakaratne* for plaintiff-respondent.

Cur. adv. vult..

October 9, 1997

WEERASEKERA, J. (P/CA)

The plaintiff-respondent filed this action in the District Court of Mt. Lavinia in respect of premises No. 97, Galle Road, Bambalapitiya seeking to eject the defendant from the premises in suit on the basis that the said premises were required within the meaning of Sec. 22 (2) (b) of the Rent Act, No. 7 of 1972 on the ground of reasonable requirement.

The defendant-appellant filed answer that his contract of tenancy was with Fathima Rizvi the daughter of the plaintiff on whose behalf the plaintiff-respondent collected rent and that the plaintiff-respondent had no right to institute this action. He also asserted that the contract of tenancy was with Fathima Rizvi who had not legally terminated the contract and that this action cannot be maintained in its present form.

The learned District Judge of Mt. Lavinia on 19.04.88 gave judgment in favour of the plaintiff-respondent. This appeal is from that judgment.

The principal matter that was urged in appeal was whether the plaintiff-respondent was the landlord of the defendant-appellant or whether Fathima Rizvi was the landlord of the defendant-appellant as envisaged in issues 1 and 5.

There is no serious dispute of the following facts. The premises were of two floors and partly used for running a textile business known as 'Mohans' and used as a residence by the defendant-appellant in the upper floor and the rear of the ground floor. The defendant-appellant was the tenant of the premises from 1950. In or about 1971 the plaintiff purchased the premises in the name of his minor daughter Fathima Rizvi. After the purchase, the declaration under Sec. 37 of the Rent Act (VI) was made by the plaintiff-respondent on behalf of the purchaser, his daughter, and describing her as the landlord and the plaintiff-appellant as the 'person who would collect the rent'. The defendant-respondent paid rents to the plaintiff-respondent and rent receipts were issued. The plaintiff-respondent by his notice to quit dated 24.11.78 gave notice of termination of the tenancy on the ground of reasonable requirement which set in motion the present action.

This appeal revolves round a person who was a tenant of premises and who continued in occupation after the premises were sold to a third party but attorned to such purchaser after receiving notice of transfer of the tenanted premises.

The issues that arose for decision at the trial in this regard were issues 1 and 5 which when translated reads as follows:-

1. Was the defendant the plaintiff's tenant?
2. As set out in para 3 of the amended answer was Fathima Rizvi the landlord of the defendant?

The learned District Judge answered issue 1 in favour of the plaintiff-respondent and issue 5 against the defendant-appellant mainly on the inference he drew from P1 written in October 1971 by the defendant-appellant to the plaintiff-respondent where he used the word 'Attorned' and stated that he 'attorned' to Abdulla the plaintiff-respondent in 1975.

Did the learned District Judge conclude correctly that by this letter (P1) a contract of tenancy as between the defendant-appellant and

plaintiff-respondent had arisen? Did the learned District Judge consider whether P1 indicated or expressed the intention of parties? Did he further consider whether there was privity of contract between the defendant-appellant and plaintiff-respondent? Was there a privity of contract between the defendant-respondent and Abdulla or as alleged by the defendant-respondent with Fathima Rizvi? These are the propositions that require examination.

Admittedly the defendant-appellant was in occupation of the premises long prior to the purchase by Fathima Rizvi in 1971. The purchaser can be safely inferred to have purchased the premises with the defendant-appellant tenant in occupation. Although the purchaser had the option as against his vendor to insist on vacant possession or in the alternative to claim recision of the sale, the purchaser Fathima Rizvi opted to purchase with a tenant in occupation. Her purchase was subject to the tenant, the defendant-appellant exercising his option of surrendering or electing to continue in occupation of the premises. In this instance the defendant-appellant accepted the latter course when called upon by the purchaser Fathima Rizvi to recognise herself, the purchaser, as his landlord. He continued to pay the rent and was issued rent receipts by the plaintiff-respondent *on behalf of* Fathima Rizvi, the landlord. In the present case the position is that before and after the transfer to Fathima Rizvi the minor daughter of the plaintiff-respondent, the defendant-appellant was in occupation of the premises in question. After information of the transfer was received he paid rent to Fathima Rizvi.

It is an established principle of the Roman Dutch Law that "Hire goes before sale". Thus a purchaser steps into the shoes of his seller as regards an existing lease by operation of law.

This legal position is based on the axiom *"Huur Gaat Voor Koop"* which is a part of our law adopted from the Roman Dutch Law. Justice Samarawickrama in *David Silva v. S. K. Madanayake*[1] states:

> "Hire goes before sale" or *'Huur Gaat Voor Koop'*, is an axiom of our law, and purchasers of, and persons succeeding to the possession of landed property, are bound by the leases previously made by the vendors. From this arises the privilege of the tenant, either to remain the tenant of the new landlord, the purchaser, or to cancel the lease. But the new landlord, the purchaser, cannot,

according to this rule, eject the tenant, but must await the expiration of the lease, or the occurrence of some circumstances which will operate as giving a right of re entry".

The significance of this legal principle therefore would be that the relationship of landlord and tenant which existed between the seller and tenant before the sale gives place to a relationship of the same kind between the tenant and the new purchaser. That in my view is the law applicable in Sri Lanka and applying that legal principle in law the defendant-appellant should be taken to have become the tenant of the new purchaser Fathima Rizvi.

As opposed to the application of this legal principle it was urged by counsel for the plaintiff-respondent that there was no privity of contract as between the defendant-appellant and Fathima Rizvi but that the privity of contract was with the father of Fathima Rizvi, the plaintiff-respondent.

In support of this argument he quoted the following passage from the treatise "Law of Contracts" by C. G. Weeramantry (page 414) which reads as follows:

"Natural guardianship carries with it the right to receive payment of a debt on behalf of the minor from a creditor of the minor, and the right of contract of the child's education, a right which the father may exercise even after his death by last will. Such guardianship further entitles the father to the full administration and management of the property almost to the same extent as an appointed guardian, unless a curator has been appointed by court or unless the person from whom the minor has derived title to the property has expressly excluded the guardianship of the father".

This was the answer the plaintiff-respondent sought to give to the declaration made under section 37 of the Rent Act (VI) shortly after the purchase of the premises by Fathima Rizvi. It is my considered view that what is conceived of in the passage stated above and the view expressed therein is fully substantiated by the declaration VI wherein Abdulla the plaintiff representing himself as the father of the minor purchaser Fathima Rizvi described as the person who would collect rent and Fathima Rizvi is described as the landlord. Moreover rents had been paid by the defendant-appellant and receipts issued

by Abdulla on behalf of Fathima Rizvi the landlord as her agent. This was a perfectly correct and lawful exercise by Abdulla the plaintiff-respondent acting for and on behalf of his minor daughter in the process of the management and administration of the minor daughter's assets. This in no way created a privity of contract of tenancy between the defendant-appellant and plaintiff-respondent and could not have given rise to an inference to displace the legal principle of Roman Dutch Law *"Huur Gaat Voor Koop"*.

The learned District Judge in my view had misdirected himself to infer that the person who was entitled to receive the rent was the plaintiff-respondent despite the plaintiff-respondent's own assertion that Fathima Rizvi was the landlord and the issuance of rent receipts on the same basis. He should have considered the legal principle applicable, viz. the axiom "Hire goes before sale" together with the legal status of a natural guardian vis-a-vis a minor child.

Let us now consider the three statuses that arose, namely,

1. that of Abdulla the plaintiff-respondent as natural guardian,
2. that of the minor Fathima Rizvi the purchaser and
3. that of the continuing tenant, the defendant-appellant.

The natural guardian in law in the absence of a legal appointment of a curator has the right of administration and management of the minor's property but his rights cannot supercede in any way or legally remove or diminish the status of a purchaser which she acquired as a minor. In law her status as purchaser remained and consequently by the application of the Roman Dutch Law principle of "Hire before sale" the only inference that can be reached is that it was Fathima Rizvi who became the landlord of the defendant-appellant and not Abdulla the plaintiff-respondent who was only an agent of the minor purchaser.

Much has been urged to displace this legal inference by the interpretation that was sought to be given to (P1) when the defendant-appellant referred to his having "attorned to Abdulla" the plaintiff-respondent. This letter was written in 1971 October long after the purchase (over the delay in payment of rent) and long after VI and long after rents had been paid and receipts issued by Abdulla on behalf

of Fathima Rizvi, the landlord. In *Eileen Prins v. Marjorie Patternott*[2] Bandaranayake, J. states as follows:

> "The use of words such as rent, tenancy, rent in advance, etc., is not conclusive proof of a contract of tenancy. These are words which laymen are apt to use for any payment in respect of accommodation".

In the present case P1 was written long after by operation of law the defendant-appellant came to be considered the tenant of Fathima Rizvi and to whom by law he paid rents and was issued receipts in fact by Abdulla the plaintiff-respondent as rent collector of Fathima Rizvi. There can be no mistake therefore that privity of contract both in law and in fact was between the defendant-appellant the tenant and Fathima Rizvi the purchaser of the premises in suit in 1970. To attempt to create or to infer that a privity of contract existed between Abdulla the father of the minor Fathima Rizvi who only legally acted for and on behalf of Fathima Rizvi and the defendant-appellant on P1 long after the privity of contract arose between Fathima Rizvi and the defendant-appellant and acted upon was clearly a misdirection by the learned District Judge.

It was sought to be argued on behalf of the plaintiff-respondent that the statement in P1 amounted to an estoppel and the defendant-appellant could not now prevaricate on the statement on P1 and if so it should have first been taken in the reply to the notice to quit. I am unable to agree with this submission. In my view after the purchase and after the declaration VI the privity of contract between Fathima Rizvi and the defendant-appellant had been sealed and completed. It meant that the defendant-appellant elected to accept Fathima Rizvi as the landlord, tendered his rents to Abdulla as the person who collected rents on behalf of Fathima Rizvi and issued rent receipts on behalf of Fathima Rizvi the landlord. That being so the defendant-appellant would in fact and in law be estopped from denying his acceptance of Fathima Rizvi the new purchaser as his landlord.

The resulting position in this case is that the status of natural guardian of the plaintiff-respondent was never merged with that of the purchaser. Fathima Rizvi remained and continued in her status as

purchaser and by application of law with the election of the defendant-appellant to occupy the premises as tenant under the new purchaser Fathima Rizvi. Fathima Rizvi the new purchaser by law became the landlord of the defendant-appellant who had been a tenant prior to the purchase by Fathima Rizvi.

In those circumstances I am of the view that the learned District Judge of Mt. Lavinia erred in coming to the conclusion that the plaintiff-respondent could maintain this action.

I therefore set aside the judgment of the District Judge of Mt. Lavinia dated 19.04.88.

The plaintiff-respondent's action is dismissed with taxed costs payable to the defendant-appellant in both Courts by the plaintiff-respondent.

WIGNESWARAN, J. – I agree.

Appeal allowed.