

## Salgadoe v. Moses

COURT OF APPEAL

WIMALARATNE, P. AND VICTOR PERERA, J.

C.A. (S.C.) 454/74—M.C. (C.R.) KANDY 22377.

MARCH 27, 1980.

*Rent Act No. 7 of 1972, section 27—Action by landlord for ejectment of tenant from part of a premises—Should such landlord be owner of the premises as well—Interpretation—Effect of proviso to section.*

### **Held**

Section 27 of Rent Act, No. 7 of 1972, enables a landlord who is not the owner of the premises but himself the tenant to institute an action for the ejectment of his tenant of a part of these premises another part of which he himself occupies. The relief afforded by the section is not confined to a landlord who is the owner of the premises.

### **Cases referred to**

(1) *West Derby Union v. Metropolitan Life Assurance Soc.*, (1897) A.C. 647; 77 L.T. 284; 13 T.L.R. 536.

APPEAL from the Magistrate's Court, Kandy.

G. F. Sethukavalar, with Q. Palliyaguru, for the defendant-appellant.

T. B. Dissanayake, with E. H. Gunasekera, for the plaintiff-respondent.

*Cur. adv. vult.*

April 11, 1980.

**WIMALARATNE, P.**

Section 27 of the Rent Act, No. 7 of 1972, enables a landlord to institute an action for the ejection of a tenant of part of a premises, another part of which is occupied by the landlord, without relying on any other grounds for ejection stipulated in section 22 of the Act. The question is whether this provision of the Rent Act is available to a "tenant landlord" as well as an "owner landlord".

It was admitted at the trial that the annual value of premises 691, Peradeniya Road, Kandy, exceeded the relevant amount; that a portion of the premises had been sublet by the plaintiff to the defendant prior to the date of commencement of the Act; and that the portion so sublet had not been separately assessed. There was also no denial of the fact that the plaintiff had given the defendant one month's notice of termination of the tenancy. The only issue was whether the plaintiff had continued to live in and only in another part of the same premises during the whole period of six months prior to 1.2.72. The learned Magistrate has held with the plaintiff on this issue and has entered judgment in ejection.

The only matter urged in appeal before us is that section 27 of the Rent Act is not available to a "tenant landlord" because it is implicit from the proviso to the section that the intention of the Legislature was to limit the benefit of this section to the owner landlord. The proviso reads thus:—

"Provided, however, that the landlord of such residential premises shall not be entitled to institute action or proceedings under the preceding provisions of this sub-section if the ownership of such premises was acquired by the landlord on a date subsequent to the specified date by purchase, or any inheritance or gift other than inheritance or gift from a parent or spouse who had acquired ownership of such premises on a date prior to the specified date."

The intention of the Legislature, it is contended, could be gathered from the reference in this proviso to ownership of the premises being acquired by the landlord. The intention therefore was to restrict the term "landlord" to "owner".

I am unable to place such a restricted interpretation to the section for the following reasons:—

- (a) The interpretation clause, section 48, provides that in this Act, unless the context otherwise requires, "landlord" in relation to any premises, means the

person for the time being entitled to receive the rent of such premises and includes any tenant who lets the premises or any part thereof to any subtenant.

- (b) If the context of this section requires that it should be limited to an owner landlord, a fortiori section 22(1)(b) and section 22(2)(b) which enables a landlord to institute an action for ejection of the tenant on the ground of "reasonable requirement" should also be limited to owner landlords because of section 22(7) referring to the date on which the ownership of the premises was acquired by the landlord. It is unthinkable that the legislature ever intended that only an owner landlord, and not a tenant landlord, should be entitled to obtain possession of rented premises on the ground of reasonable requirement.
- (c) As has been contended by learned counsel for the respondent a proviso cannot restrict the meaning of the main section. If the language of the main section has expressed the intention of the legislature in unambiguous terms, then you cannot utilise some words used in a proviso to that section to deprive the main section of its meaning and effect. As stated by Lord Watson in *West Derby Union v. Metropolitan Life Assurance Co.* (1) at 652, "I am perfectly clear that if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso. When one regards the natural history and object of provisos, and the manner in which they find their way into Acts of Parliament, I think your Lordships would be adopting a very dangerous and certainly unusual course if you were to import legislation from a proviso wholesale into the body of the statute, although I perfectly admit that there may be and are many cases in which the terms of an intelligible proviso may throw considerable light on the ambiguous import of the statutory words."

For these reasons I am of the opinion that it is open to a tenant landlord, as well as to an owner landlord, to proceed under section 27 of the Rent Act in order to eject a tenant of part of the premises another part of which is occupied by him.

I would accordingly dismiss this appeal with costs.

**VICTOR PERERA, J.**—I agree.

*Appeal dismissed.*