SOMAWATHIE

v.

MANGALIKA

COURT OF APPEAL
JAYAWICKRAMA, J.
C.A.L.A. 5/98 (LG)
D.C. GALLE 387/RE
NOVEMBER 29, 2000
FEBRUARY 16, 2001

Rent Act 7 of 1972 - S.22(1)(d) - Eviction-using premises for illegal purposes - Is Notice of Termination of tenancy necessary ?

Held :

(i) There is no requirement that Notice should be given when a case is instituted according to the provisions of S.22(1)d.

(ii) When the Plaint states that he was convicted that conviction itself suffice to file an action for the ejectment of the tenant.

(iii) With the conviction of the tenant the tenancy agreement comes to an end. The conviction itself can be regarded as a termination of the tenancy agreement.

APPLICATION for Leave to Appeal from an order of the District Court of Galle, leave being granted.

Cases referred to :

1. *K. T. H. Pieris v. M. D. Fernando* - 78 NLR 206 - Distinguished
2. *D. Thangiah v. M. Yoonus* - 76 NLR 183
3. *Wimalasuriya v. Ponniah* - 52 NLR 191

Saliya Pieris with *Upul Kumarapperuma*, for Substituted Defendant Petitioner Appellant.

Manohara R. de Silva with *Ms. Devika Samaranayake* for Plaintiff Respondent.

Cur. adv. vult.

March 23, 2001.
JAYAWICKRAMA, J.

This is an application for leave to appeal against the order of the learned Additional District Judge of Galle dated 16. 12. 1997.

The Plaintiff-Respondent filed an action against the Substituted Defendant-Petitioner's Husband for ejectment from the premises described in the schedule to the petition alleging that he had used the premises for illegal purposes. The Respondent sought to eject the Petitioner in terms of Section 22(1)(d) of the Rent Act. The Defendant while denying the said allegations in his answer took up the position that the monthly rent agreement was not lawfully terminated by the Respondent and that he is not therefore entitled to institute or continue the action. The trial commenced on 26th August 1997 on which date admissions were recorded and issues were raised. The 4th issue raised by the Petitioner was as follows :-

'Is the Plaintiff entitled to pursue this action without lawfully terminating the monthly rent agreement?"

On 16. 12. 1997 the learned Additional District Judge delivered his order holding against the Defendant contending that Section 22(1)(d) of the Rent Act did not require notice of termination of the tenancy.

When this application was mentioned on 02. 11. 1998, it was brought to the notice of this Court that the Trial Judge has failed to consider the judgment of the Supreme Court - *K. T. H. Pieris v. M. D. Fernando*[1], and that he has only referred to the judgment of Wijayatilake, J. in *D. Thangiah v. M. Yoonus*[2]. The Court granted Leave to appeal on the basis that there is a question of law involved.

The learned Counsel for the Petitioner-Appellant submitted that although Section 22(1)(d) of the Rent Act does not specify that a notice is required to terminate a monthly tenancy, it is

supplemented by common law which requires that a month's notice be given to the tenant in terminating a monthly tenancy, and without such a termination a party cannot come to Court to seek ejectment. The learned Counsel contended that in *K. T. H. Peiris v. M. D. Fernando(Supra)* the Supreme Court held that the Plaintiff is not entitled to come before Court for an ejectment unless he has given a valid notice of termination of the contract of tenancy. He further submitted that this Court is bound by the above judgment. He further submitted that if a party fails to comply with the provisions set out in Section 22(1) of the Rent Act, the innocent party should follow the proper legal procedure to terminate the monthly rent agreement and that a cause of action arises only when the landlord for lawful reasons terminates the monthly tenancy agreement and the tenant refuses to quit. He contended that such a termination necessarily requires notice be given to the tenant, and that a cause of action arises only after the landlord has given a valid one month notice to the tenant terminating the tenancy. He further submitted that in this case the rent agreement has not been made for an illegal purpose, and it was rented out to the tenant for a lawful purpose and hence there is no illegality. The learned Counsel further contended that if the premises had been used for an illegal purpose then there is a breach of a condition of the agreement and the landlord could terminate the agreement on that ground but with notice to the tenant as stipulated by the common law.

The learned Counsel for the Plaintiff-Respondent submitted that the learned District Judge has correctly answered the issue in the affirmative and that this action is not a common law action but an action filed under Section 22(1)(d) of the Rent Act and that the Rent Act does not require the Plaintiff to give notice of termination to the tenant before filing an action under the said section 22(1)(d) of the Rent Act. He further contended that the maintenance of the present action cannot be determined on the preliminary issue as termination could be done either orally or in writing and to ascertain whether there was a termination evidence have to be led. He contended that cessation of tenancy

under the common law need not necessarily be in writing as a contract of letting under the Roman Dutch Law need not be in writing. (Maas Dorf Vol.3 page 208)

Under Section 22(1)(d) of the Rent Act, "the tenant or any person residing or lodging with him or being his subtenant has, ***in the opinion of the Court,*** being guilty of conduct which is a nuisance to adjoining occupiers or ***has been convicted of using the premises for an immoral or illegal purpose*** an action for the ejectment of the tenant could be instituted. Section 22 of the Act provides for giving of notice where notice is required. There is no requirement that notice should be given when a case is instituted according to the provisions of section 22(1)(d) of the Act. When one carefully reads the wording of Section 22(1)(d), it is clear that when the tenant or any person residing or lodging with him ***has been convicted*** of using the premises for an immoral or illegal purpose, he automatically dis-qualifies to be the tenant and the tenancy agreement extinguishes itself on his conviction. The conviction here means a conviction by a Court of Competent Jurisdiction. When the plaint states that he was convicted by a Court of Competent Jurisdiction, that conviction itself suffice to file an action for the ejectment of the tenant. With the conviction of the tenant, the tenancy agreement comes to an end. The conviction itself can be regarded as a termination of the tenancy agreement.

As submitted by the learned Counsel for the Defendant-Petitioner-Appellant, in *K. T. H. Petris v. M. D. Fernando (Supra)* it was held that :

> ***"Section 22(1) presupposes a cause of action which can only be constituted when the landlord for lawful reasons severs the relationship of landlord and tenant. Section 22, therefore, deals only with a limitation on the power of the Court in respect of actions by a landlord to eject the tenant and does not provide a right to come into Court without terminating the tenancy."***

According to the facts and circumstances in the above case where a person institutes an action on the basis that the Defendant had deteriorated the premises by his acts or neglect or default he is entitled to a notice for the simple reason that he should be aware on what basis the Plaintiff seeks to terminate the contract. But in the case of a conviction by a Court of Competent Jurisdiction for using the premises for an immoral and illegal purpose, there is no necessity for further notice as the Defendant himself is aware that he has no legal right to continue to be a tenant due to his own conduct.

In the above case Wanasundara, J. expresses a similar view in respect of such a situation. Wanasundara, J. observed :

> ***"In Wimalasuriya v. Ponniah,[3] Basnayake, J. held that no notice terminating the tenancy is required in the case of an unauthorised sub-letting. I find that this is undoubtedly correct on a plain reading of the relevant provisions". (Vide Peiris v. Dickson Fernando at page 208,).***

The above observation substantiate the argument that under Section 22(1) there are instances where an action could be instituted without giving notice, e.g: Unauthorised sub-letting, tenant being convicted of using the premises for an immoral and illegal purpose, etc.

In *Wimalasuriya v. Ponniah, (supra)* Basnayake, J. (as he was then) stated :

> ***"Under the common law the landlord is entitled to institute proceeding in ejectment against a tenant who remains in the leased property after the termination of the lease. A lease terminates either by effluxion of time or by notice of termination where a lease is terminable on notice. Where there is no express agreement to the contrary a tenant may under our law sub-let an urban tenement. The act of sub-letting by a tenant of an urban tenement does not***

give the landlord the right to cancel the lease and ask for possession of the premises. It cannot therefore be said that the landlord is obliged by the common law to give notice before exercising his statutory right under section 9 of the Act (Rent Restriction Act No. 29 of 1948). Nor does the statute impose any obligation on him to give notice before proceeding thereunder. A notice of cancellation of the contract of tenancy need not under our law precede every action in ejectment. A cancellation need be made only in a case where without such cancellation the landlord is not under the terms of the lease entitled to demand the surrender of the premises.

The legislature is presumed to know the law and it can safely be assumed that if it intended that notice should be given before the institution of legal proceedings under Section 9 it would have provided for it by express enactment, especially as it was conferring by statute a right which the landlord does not have under the common law."

In view of the above judgments and in view of the fact that Section 22(1)(d) has not provided by express terms that notice should be given before the institution of legal proceedings under that Section I hold that the learned Additional District Judge has come to a correct finding in this instance.

The learned Additional District Judge has correctly held that notice is not required on the basis of the judgment in *D. Thangiah v. M. Yoonus (Supra)*, Where it was held :-

"That once Section 12A(1)(d) of the Rent Restriction Act applies to a case, it supersedes any rights arising on the tenancy agreement in regard to the period of notice to terminate the tenancy."

The learned Additional District Judge in a carefully considered order has accepted the version of the Plaintiff on

the question of terminating the monthly rent agreement and held with the Plaintiff that Section 22(1)(d) of the Rent Act does not require notice and I see no reason whatever to take a different view.

As stated by Wijayatilake, J. in *Thangiah v. Yoonus (Supra)*:

"If tenants are permitted to mess up the premises they rent out in this fashion and the law turns a blind eye to such destruction, ultimately, well conducted tenants will stand to suffer considerably as landlords will be slow to rent out their premises not knowing their propensities, not to speak of their cats!".

The above observation is very much more applicable where the tenant has been convicted of using the premises for an immoral or illegal purpose.

I would accordingly dismiss this leave to appeal application with costs fixed at Rs. 5000/- payable by the Defendant-Petitioner-appellant to the Plaintiff-Respondent.

Application dismissed.