

## WICKREMASINGHE

v.

## ATAPATTU

COURT OF APPEAL.

G. P. S. DE SILVA, J. AND MOONEMALLE, J.

C. A. 635/79 (F).

D. C. MOUNT LAVINIA 461/RE.

MAY 9 AND 10, 1985.

*Rent and Ejectment – Business premises and residential premises – Excepted premises – Burden of proof – Sections 2 and 48 of the Rent Act – Regulations 1, 2, and 3 of the Schedule to the Rent Act.*

The plaintiff sued the defendant for ejectment of his tenant the defendant from premises let to him. The entire basis of the action was that the premises were business premises situated within the Town Council limits of Maharagama and excepted premises as the annual value was over rs. 1,000. The defendant was not resident in the premises in suit but ran a private tutory in them.

**Held –**

The premises were business premises as a private tutory was being run there but for the plaintiff to succeed the burden was on him to prove that the premises were excepted premises within the meaning of the Rent Act. For this the plaintiff had to prove firstly that the premises were *assessed as business premises* for the purpose of rates levied by the local authority and secondly that the annual value was over Rs. 1000. All business premises of which the landlord is the Commissioner of National Housing or a local authority are also excepted premises. The premises in suit though of the annual value of over Rs. 1,000 had been assessed as residential premises. Hence the plaintiff's suit fails.

**Cases referred to :**

- (1) *Hussain v. Ratnayake* (1967) 69 NLR 421.
- (2) *Thompson v. Gould & Co.* [1910] AC 409, 410.
- (3) *Aloysius v. Pillaipody S. C. Appeal No. 4/82 : M. C. (Civil) Jaffna 1167/L – S.C. Minutes of 2nd December, 1982.*

APPEAL from a judgment of the District Court of Mount Lavinia.

W. P. Gunatilleke for defendant-appellant.

D. R. P. Goonetilleke for plaintiff-respondent.

*Cur. adv. vult.*

June 19, 1985.

**G. P. S. DE SILVA, J.**

The plaintiff brought this action on 29th December 1977 for the ejectment of the defendant from premises No. 441, High Level Road, Navinna, and for recovery of damages. In his plaint he averred that he was the owner of the premises in suit which had been let to the husband of the defendant on a rental of Rs. 250 per month ; that the defendant's husband, Wickremasinghe, had died on 23rd January 1977 ; that on 13th May 1977 the defendant was noticed to quit the premises on or before 31st May 1977 ; that the defendant, notwithstanding the notice to quit, remains in unlawful occupation of the premises from 23rd January 1977. It is of the utmost importance to note that the entire basis of the action was that the premises were "business premises" situated within the limits of the Town Council of Maharagama and that, the annual value being over Rs. 1,000, were "excepted premises" within the meaning of the Rent Act No. 7 of 1972 (hereinafter referred to as the Rent Act).

At the trial, the ownership of the premises was admitted. It was further admitted that the premises were situated within the limits of the Town Council of Maharagama and that it had been previously let to Wickremasinghe, the husband of the defendant. The central issue in the case was issue No. 1 - "Are the premises in suit governed by the Rent Act No. 7 of 1972 ?" The District Judge answered this issue in the negative and held that the premises were "excepted premises" within the meaning of the Rent Act. He accordingly entered judgment for the plaintiff and the defendant's appeal is now before us.

The only point argued by Mr. W. P. Gunatilleke, Counsel for the defendant-appellant was that the finding that the premises were "excepted premises" was clearly erroneous and that the action must necessarily fail. It was Counsel's submission that the District Judge had misconstrued the relevant provisions of the Rent Act.

Before I deal with the provisions of the Rent Act, let me refer to the evidence of the plaintiff, who was the principal witness in the case. The defendant did not give evidence. The plaintiff stated that he gave the premises on rent in 1971 to Wickremasinghe, the husband of the defendant, and that Wickremasinghe, while he resided at 108, Old Kottawa Road, Nugegoda, conducted a private tutory in the premises in suit. As rightly submitted by Mr. D. R. P. Goonetilleke, Counsel for

the plaintiff-respondent, the plaintiff's evidence on this point is strongly corroborated by two documents, viz. P3 and D1. P3 is a certified copy of the Certificate of Registration dated 2nd August 1972 under the Business Names Ordinance. P3 establishes the following facts :—

- (a) that Wickremasinghe commenced on 10.4.72 a business by the name of " *සර්ව කටයුතු* "
- (b) that the principal place of the business was the premises in suit ;
- (c) that the general nature of the business was conducting a private tutory ;
- (d) that the usual residence of Wickremasinghe was 108, Old Kottawa Road, Nugegoda.

The other document D1 was the statement required to be furnished by the landlord (plaintiff) under section 37 of the Rent Act. It gives the address of the tenant (Wickremasinghe) as 108, Old Kottawa Road, Mirihana, the date of commencement of the tenancy as 1st August 1971. In column 6 of D1 where the landlord is required to set out the purpose for which the premises is occupied it is stated, "given for the purpose of residence. It is now being used for a business purpose – conducting a tutory". D1 is dated 8.2.75, long before the date of the notice to quit. Thus the District Judge's finding that Wickremasinghe was carrying on a private tutory in the premises in suit, while he resided at 108, Old Kottawa Road, is clearly supported by the oral and documentary evidence.

The expressions "business premises" and "residential premises" are defined in section 48 of the Rent Act. According to the definition "residential premises" means "any premises for the time being occupied wholly or mainly for the purposes of residence" while "business premises" means "any premises other than residential premises. . . . .". These two definitions are identical with the definitions contained in the Rent Restriction Act (Chap. 247) which has now been repealed. It is well settled that if persons actually reside in the premises or in the major portion of the premises, such premises are "residential premises" within the meaning of the Act – vide the decision of the Divisional Bench in *Hussain v. Ratnayake* (1). In the instant case, there is no such evidence. On the contrary, the evidence is that the premises were used to conduct a private tutory. I

accordingly hold that the premises in suit are "business premises" within the meaning of the definition contained in section 48 of the Rent Act.

But Mr. W. P. Gunatilleke contends that the plaintiff cannot succeed by merely establishing that the premises are "business premises" within the meaning of the Rent Act. He must further prove that the premises are "excepted premises" within the meaning of the Rent Act. Relying strongly on Regulation No. 3 in the Schedule to the Rent Act, Counsel submitted that there must be proof, firstly, that the premises were *assessed as business premises* for the purpose of rates levied by the local authority and, secondly, that the annual value of premises so assessed exceeded Rs. 1,000. Counsel maintains that the plaintiff has failed to prove these vital matters and his action must therefore fail.

As stated earlier, the plaintiff has come into Court on the basis that the premises in suit are "excepted premises" within the meaning of the Rent Act. Hence, on this crucial issue, the burden of proof clearly rests on the plaintiff.

Let me now consider the statutory provisions which are relevant to the question of "excepted premises". Section 2 deals with the operation of the Rent Act. The material part reads thus :-

"2 (1) This Act shall be in operation -

(a) in every area in which the Rent Restriction Act (Chap. 274) was, by virtue of the provisions of section 2 of that Act and by virtue of any notification made under that section, in force immediately prior to the date of commencement of this Act. . . . ."

2 (4) So long as this Act is in operation in any area, the provisions of this Act shall apply to *all premises in that area, not being excepted premises* ; and the word "premises" wherever it occurs in this Act shall, unless the context otherwise requires, be construed as premises to which this Act applies, and the expressions "residential premises" and "business premises" shall be construed accordingly.

2 (5) The regulations in the Schedule to this Act shall have effect for the purpose of determining the premises which shall be excepted premises for the purposes of this Act. . . . ."

The regulations in the Schedule which set out the "excepted premises" read thus :-

1. Any premises (other than residential premises) of which the landlord is a local authority shall be excepted premises for the purpose of this Act.
2. Any premises of which the landlord is the Commissioner of National Housing shall be excepted premises for the purpose of this Act.
3. Any business premises (other than premises referred to in regulation 1 or regulation 2) situated in any area specified in column I hereunder shall be excepted premises for the purposes of this Act if the annual value thereof *as specified in the assessment made as business premises* for the purposes of any rates levied by any local authority under any written law and in force on the first day of January 1968, or, where the assessment of the annual value thereof *as business premises* is made for the first time after the first day of January, 1968, the annual value as specified in such first assessment, exceeds the amount specified in the corresponding entry in column II ;

I Area	II Annual value Rs.
Municipality of Colombo	6,000
Municipality of Kandy, Galle or any other Municipality	4,000
Town within the meaning of the Urban Councils Ordinance	2,000
Town within the meaning of the Town Councils Ordinance	1,000

4. Any business premises situated in any area in which the Act is in operation (not being a Municipality or a Town within the meaning of the Urban Councils Ordinance or the Town Councils Ordinance) shall be excepted premises for the purposes of this Act -

- (a) if on the date of commencement of this Act such premises were let at a rent exceeding Rs. 1,500 per annum ; or
- (b) where such premises were not let on that date, if they are first let thereafter at a rent exceeding Rs. 1,500 per annum ;

Provided, however, that the board may on the application of the tenant, declare that any premises referred to in the preceding provisions of this regulation are not excepted premises, if the board is satisfied that the fair rental value of the premises is not more than Rs. 1,500 per annum". (The emphasis is mine).

On a consideration of the provisions of section 2 read with the regulations in the Schedule it is clear that all residential premises other than residential premises of which the Commissioner of National Housing is the landlord are governed by the provisions of the Rent Act. This was a significant departure from the position that obtained under the previous Rent Restriction Act No. 29 of 1948 (Chap. 274). Moreover, it is not all "business premises" which are excepted premises within the meaning of the Rent Act. All business premises of which the landlord is the Commissioner of National Housing or of which the landlord is a local authority are "excepted premises". The only other "business premises" which are "excepted premises" for the purpose of the Rent Act are those premises set out in regulations 3 and 4. Admittedly the premises in suit are within the limits of the Town Council of Maharagama which is an area in which the Rent Act is in operation – vide the gazette notification D3. Therefore the only regulation which has to be considered for the purposes of the instant case is regulation No. 3. Indeed Counsel for the plaintiff-respondent contended that the premises in suit fell within the provisions of regulation No. 3 and were therefore excepted premises.

At the trial the defendant marked in evidence certified extracts of the assessment register for the years 1968 to 1973 – vide D2 and D2A. These documents show (a) that the annual value for the years 1968 to 1973 was always above Rs. 1,000 ; (b) that the description of the premises for the years 1968 and 1969 was "tiled cottage and land" and for the years 1970 to 1973 "tiled house and land". Having regard to the terms of the description of the premises given in D2 and D2A it seems to me that the premises were assessed as "residential premises" and not as "business premises". If it had been assessed as "business premises" an expression such as "private tutory" would have been used. The words "house" and "cottage" are clearly indicative of an assessment on the basis of "residential premises". Now it is of importance to note that regulation 3 speaks of "business premises where the annual value. . . . as specified in the *assessment made as business premises* for the purposes of any rates levied by any local

authority under any written law . . . . . " exceeds Rs. 1,000. It is not without significance that the words emphasized above by me were not found in regulation No. 2 in the Schedule to the Rent Restriction Act No. 29 of 1948. The expression "annual value" itself is defined in section 48 :

"Annual value of any premises means the annual value of such premises *assessed as residential or business premises, as the case may be*, for the purposes of any rates levied by any local authority under any written law and *as specified in the assessment* under such written law . . . . . " (The emphasis is mine).

Once again it is to be noted that there was no definition of annual value in the Rent Restriction Act No. 29 of 1948. Thus it seems to me that where the annual value of any premises are assessed, such assessment must necessarily be based on the character of the premises, namely whether the premises are residential or business premises. In the present case, as stated earlier, D2 and D2A show that the annual value, although it exceeds Rs. 1,000, was not assessed on the basis that the premises were "business premises". In my view, regulation 3 expressly requires that the annual value exceeding Rs. 1,000 must relate to premises assessed as business premises. I accordingly hold that the premises in suit do not fall within the provisions of regulation 3 in the Schedule to the Rent Act and are therefore not "excepted premises" within the meaning of the Rent Act.

Counsel for the plaintiff-respondent submitted that what is contemplated in regulation 3 is merely the *use* of the premises as business premises and nothing more. But this would be to overlook the words "annual value thereof as specified in the assessment made as business premises" and to introduce new words – a mode of construction which, as a general rule, is not permissible. In the oft-quoted words of Lord Mersey in *Thompson v. Gould & Co.*(2). "It is a wrong thing to read into an Act of Parliament words which are not there, and, in the absence of clear necessity, it is a wrong thing to do so": Maxwell in his *Interpretation of Statutes* says "A construction which will leave without effect any part of the language of a statute will normally be rejected". (Eleventh Edn. page 15). I am thus unable to accept the interpretation contended for on behalf of the plaintiff-respondent as it does violence to the language used by the draftsman.

The view I have taken above finds some support in the dicta of Wimalaratne, J. in *Aloysius v. Pillaipody* (3) wherein the learned Judge observed :

“ . . . . . the annual value entered in the register is necessarily linked with the description of the property. The description of the property as entered in the register thus affords prima facie evidence as to whether the property has been assessed as residential premises or as business premises. . . . . Not only the annual value and the rates, but also the description of the property as entered in the assessment register afford proof of the matters represented therein. The entries also afford material for determining. . . . . whether premises are or are not ‘excepted premises’ ”.

For these reasons, the appeal is allowed, the judgment and decree of the District Court are set aside and the plaintiff’s action is dismissed with costs fixed at Rs. 315. The defendant is entitled to costs of appeal fixed at Rs. 210.

MOONEMALLE, J. – I agree.

*Plaintiff’s action dismissed.*

---