

HAMEED
V.
CASSIM

COURT OF APPEAL
DR. R.B. RANARAJA, J.
C.A. 1008/91 F
D.C. COLOMBO NO. 6742 RE.
MAY 14, 1996.

Rent and Ejectment - Rent Act 7 of 1972 -S.22, S.22(7), S.36 - Gift to daughter - Reasonable requirement pleadings - Issues - S. 149 Civil Procedure Code - Issue framed during course of Judgment - Specified date.

One J. was the Tenant and H. the Landlord of the premises in question. The said H. gifted the premises to her daughter, the Plaintiff on 2.2.76, who on 27.8.82 gave Notice to J to hand over vacant possession to her on or before 31.8.83, as the premises were reasonably required for her occupation. J died on 17.4.83 and her daughter the Defendant succeeded to the Tenancy and was accepted by the Plaintiff on 10.10.83. The Plaintiff thereafter informed the Defendant by letter dated 31.1.84 to quit and handover vacant possession on or before 28.2.85 as it was reasonably required for her occupation. As the Defendant failed to vacate the said premises, the Plaintiff filed action to evict her. The Defendant filed answer stating that the Plaintiff did not reasonably require the premises for her occupation and in any event she could not maintain the action as she had failed to comply with S.22 of the Rent Act. During the course of the judgement the learned District Judge raised a further issue "Can the Plaintiff have and maintain the action in view of S.22 (7) of the Rent Act."

The learned District Judge held with the Plaintiff on the issue of reasonable requirement but in view of his answer to the new issue in the negative, dismissed the Plaintiff's action.

It was contended by the Plaintiff-Appellant that the learned District Judge should not have raised an additional issue in the course of his judgment after the conclusion of the respective cases of the parties; it was further contended that in any event, as the Defendant became the Tenant upon the death of the previous tenant, her mother on 17.4.83, and that the Defendants' mother became the Tenant on the death of her husband in 1978, as the Plaintiff had by gift acquired ownership prior to that in 1976, the Plaintiff was not barred by S.22 (7) from instituting action.

Held:

(1) the provisions of S.149 of the Civil Procedure Code do not preclude a District Judge from framing a new issue after the parties have closed their respective cases and before the judgement is read out in open Court.

Per Dr.Ranaraja, J.

"It is not necessary that the new issue should arise on the pleadings. A new issue could be framed on the evidence led by the parties orally or in the form of documents. The only restriction is that the Judge in framing a new issue should act in the interests of justice, which is primarily to ensure the correct decision is given in the case."

(2) The relevant issue is a question of law on which it is not absolutely necessary for the Judge to hear either party before answering it.

(3) In the definition of the expression 'specified date', the words, the date on which 'the Tenant for the time being came into occupation' can only mean the date on which the Tenant for the time being came into occupation Qua Tenant, on that interpretation both the respondent and her mother became tenants' after the plaintiff acquired ownership of the premises by gift from her mother, who herself had acquired ownership on 17.1.1942.

AN APPEAL from the judgment of the District Court of Colombo.

Cases referred to :

1. *Silva v. Obeysekera* 24 NLR 97 at 107
2. *Senarat Nandadeva v. Gulamhussein S.C.* No. 65/93 SCM 30.6.94 1994 B.A.L.J. Vol. V. Part 11 page 12.

*N. R. M. Daluwatte P.C. with Hemasiri Withanachchi for Petitioner
S. A. Parathalingam P.C. with M.F. Musthapa for Respondent.*

Cur. adv. vult.

June 12, 1996.

DR. RANARAJA, J.

One Mrs. Jainudeen was the tenant and Mrs. Mohamed Hadi was the landlord of premises No.69/3, Ketawelamulla Lane, Dematagoda. The said Mrs. Hadi by Deed No. 198 gifted the said premises to her daughter the Plaintiff on 2.2.76, who on 27.8.82 gave notice in writing to the said Mrs. Jainudeen to quit and hand over vacant possession to her on or before 31.8.83, as the premises was reasonably required for her occupation as a residence. Mrs. Jainudeen died on 17.4.83 and her daughter the Defendant succeeded to the tenancy and was accepted as such by the Plaintiff's letter dated 10.10.83. The Plaintiff thereafter informed the Defendant by letter dated 31.1.84, to quit and hand over vacant possession of the premises on or before 28.2.85 as it was reasonably required for her occupation as a residence. As the Defendant failed to comply, the Plaintiff filed action to have the Defendant ejected from the premises and recover damages at the rate of Rs. 62/49 from 1st March 1985 till she obtained vacant possession.

The Defendant filed answer stating inter alia, that the Plaintiff did not reasonably require the premises for her occupation and in any event, she could not maintain the action as she had failed to comply with the provisions of section 22 of the Rent Act. Trial commenced on nine issues. The Plaintiff and the Defendant gave evidence in support of their respective cases. During the course of the judgment the learned District Judge raised a further issue namely;

(10) Can the Plaintiff have and maintain the action in view of provisions of section 22 (7) of the Rent Act?

The learned District Judge held with the Plaintiff on the issue of reasonable requirement but in view of his answer in the negative to issue No. 10, he decided that it was unnecessary to answer the issues 5 to 9 and dismissed the Plaintiff's action with costs. This appeal is from that judgment.

Learned counsel for the Appellant submitted that the learned District Judge should not have raised an additional issue, in the course of his judgment after the conclusion of the respective cases of parties, since such an issue was not in the contemplation of either party.

Section 149 of the Civil Procedure Code provides: "The Court may, at any time before passing a decree, amend the issues or frame additional issues on such terms as it thinks fit".

Bertram C.J. in Silva v Obeysekera⁽¹⁾ commenting on the discretion of a judge to allow issues after the commencement of the trial observed, "No doubt it is a matter within the discretion of the Judge whether he will allow fresh issues to be formulated after the case has commenced, but he should do so when such a course appears to be in the interests of justice, and it is certainly not a valid objection to such a course being taken that they do not arise on the pleadings."

The provisions of section 149 considered along with the observation of Bertram C.J. certainly do not preclude a District Judge from framing a new issue after the parties have closed their respective cases and before the judgment is read out in open court. It is not necessary that the new issue should arise on the pleadings. A new issue could be framed on the evidence led by the parties orally or in the form of documents. The only restriction is that the Judge in framing a new issue should act in the interests of justice, which is primarily to ensure the correct decision is given in the case. It also means that the Judge must ensure that when it is considered necessary to hear parties to arrive at the right decision on the new issue, that they be permitted to lead fresh evidence or if it is purely a question of law, that they be afforded an opportunity to make submissions thereon.

In the present appeal, the relevant issue is a question of law on which it was not absolutely necessary for the Judge to hear either party before answering it. Thus I am of the view there was no prejudice caused to either party on that score.

The Plaintiff has not pleaded the specific section of the Rent Act under which she claimed relief. Admittedly the standard rent of the premises does not exceed Rs.100/-. The action has therefore to be

founded on section 22 (1) (b). It is not denied that the plaintiff gave the Defendant a year's notice in terms of section 22 (6). The learned District Judge's finding that the Plaintiff is not the owner of more than one residential premises is also not challenged.

The learned District Judge's finding that section 22 (7) was a bar to instituting and maintaining the action was strenuously attacked by learned counsel for the Appellant.

The relevant part of the section reads;

(7) Notwithstanding anything in the preceding provisions of this section, **no action or proceedings** for the ejection of the tenant of any premises referred to in sub section (1) or subsection (2) (i) **shall be instituted.**

- (a)
- (b)

Where the ownership of such premises was acquired by the landlord, on a date subsequent to the specified date by purchase or by 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. provided

In this subsection **specified date "means the date on which the tenant for the time being of the premises, or the tenant upon whose death the tenant for the time being succeeded to the tenancy under section 36 of the Act or section 18 of the Rent Restriction Act (Chapter 274) came into occupation of the premises."**

The Defendant became the tenant of the premises upon the death of the previous tenant, her mother, on 17.4.83. It is in evidence that the Defendant's mother became the tenant of the premises on the death of her husband in 1978. Therefore learned counsel for the Appellant submitted as the Plaintiff had by gift from her mother acquired ownership prior to that in 1976, she was not barred by section 22 (7) from instituting action to recover the said premises on the ground of reasonable requirement for occupation as a residence.

Learned counsel for the Respondent on the other hand argued that on a plain reading of section 22 (7) the word "**came into occupation**" should be taken literally to mean the date on which either the present tenant or the tenant to whose tenancy rights the present tenant succeeded came into **physical occupation**, and the date of such physical occupation should be considered the "specified date." If that interpretation was accepted, he argued, the present tenant came into occupation of the premises when her father was the tenant, about 25 years prior to the day she gave evidence, that fact would be a bar to instituting action under section 22 (1) (b). Although this interpretation has its attractions, since the purpose of the Rent Act is to protect the tenants, yet I am bound by the judgment of the Supreme Court in *Senarat Nandadeva v Gulamhussein*⁽²⁾, where it was held "in the definition of the expression specified date", the words "the date on which the tenant for the time being came into occupation of the premises" can only mean the date on which the tenant for the time being came into occupation **Qua Tenant**. On that interpretation both the Respondent and her mother became tenants of the premises after the Plaintiff acquired ownership of the premises by gift from her mother, who herself had acquired ownership of the premises upon Deed No. 3292 dated 17.1.1942.

The learned District Judge was therefore in error in holding that the Plaintiff was debarred by section 22(7) from instituting the action against the Defendant. On the evidence led the issues framed should have been answered as follows.

- (1) yes
- (2) yes
- (3) yes
- (4) yes
- (5) At the rate of Rs. 62/49 per month from 1.3.85 till vacant possession is obtained.
- (6) yes
- (7) Does not arise
- (8) yes
- (9) Does not arise
- (10) yes

The judgement of the District Judge is set aside. Enter decree as prayed for in the plaint. The appeal is allowed with costs.

Appeal Allowed.