RANASINGHE
v.
PREMADHARMA AND OTHERS

SUPREME COURT.
SHARVANANDA, C. J., WANASUNDERA, J., WIMALARATNE, J., COLIN-THOMÉ, J. AND RANASINGHE, J.
S.C. APPEAL No. 14/84 – C. A. No. 174/80 (F) – D.C. KANDY No. 877/RE.
DECEMBER 10, 1984.

Landlord and Tenant – Rent and Ejectment – Denial of tenancy – Is tenant entitled to notice ?.

In a suit for rent and ejectment the tenant claimed he had constructed the premises and was entitled to occupy them free of rent until the cost was set off. In effect he claimed a jus retentionis and denied tenancy.

Held – (Wanasundera, J. dissenting) –

The tenant is not entitled to notice because he had repudiated his tenancy. In such a case the landlord need not establish any one or more of the grounds of ejectment stipulated in section 22 of the Rent Act No. 7 of 1972 for success in his suit for ejectment.

Edirisinghe v. Patel (1973) 79(1) NLR 217 not followed.

Kandasamy v. Gnanasekeram S. C. Appeal No. 60/82 (C.A. Appeal No. 629/79 – S.C. Minutes of 16.6. 1983) followed.

Cases referred to :

(1) *Edirisinghe v. Patel (1973) 79 (1) NLR 217.*
(2) *Kandasamy v. Gnanasekeram, S.C. Appeal No. 60/82 (C.A. Appeal No. 629/79, D.C. Colombo 2096/RE, S.C. Minutes of 16.6.1983.*
(3) *Muttu Natchia v. Paturna Natchia (1895) 1 NLR 21.*
(4) *Sundra Ammal v. Jusey Appu (1934) 36 NLR 400.*
(5) *Pedrick v. Mendis (1959) 62 NLR 471.*
(6) *Hassan v. Nagaria (1969) 75 NLR 335.*
(7) *Mansoor v. Umma (1984) 1 SriLR 151.*
(8) *Subramaniam v. Pathmanathan (1984) 1 SriLR 252.*
(9) *Doe v. Frowd (1828) 4 Bing. Reports 555.*

Faiz Mustapha for plaintiff-appellant.

R. K. W. Goonesekera for defendant-respondents.

Cur. adv. vult.

February 8, 1985.

SHARVANANDA, C.J.

This is an appeal from the judgment of the Court of Appeal setting aside a judgment of the District Court, Kandy, in a rent and ejectment case. The question raised by the appeal is of a general character and of great importance in rent and ejectment cases, having given rise to conflicting judgments. A Divisional Bench of this court has been constituted to resolve this conflict and to give a binding decision. The question can be formulated this way–

> Where the plaintiff institutes action for the ejectment of the defendant, his tenant, from premises governed by the Rent Act, and where the defendant denies the tenancy, is the court precluded from granting an order of ejectment of such defendant unless the plaintiff establishes any one or more of the grounds for ejectment stipulated in section 22 of the Rent Act ?

The plaintiff, by her plaint dated 24.3.1977, claimed arrears of rent, damages and ejectment of the defendants, husband and wife from the premises in suit, which are admittedly governed by the provisions of the Rent Act. She averred that she had rented out the premises to the defendants at a monthly rental of Rs. 16 and that they have failed to pay rent since August 1972 and that by notice dated 27th November, 1976, she had requested them to quit and deliver possession of the premises on or before the end of February 1977 The defendants in their answer took up the position that they had constructed the house standing on the premises at a cost of Rs. 5,000 and that they were entitled to remain in occupation thereof free of rent until the said amounts are set off. The defendants thus based their right to occupation of the premises not on any tenancy under the plaintiff but on an independent title of their own – namely jus retentionis. By way of reconvention they claimed this amount for the improvements effected by them. They also denied both the receipt and the validity of the notice to quit pleaded by the plaintiff. It is clear from the answer that they denied the tenancy of the premises of the plaintiff, though they had in fact in an earlier action No. 10192/L, between the parties taken up the position that they were in fact tenants of the plaintiff.

The case proceeded to trial on the following issues, inter alia :–

(1) Are the defendants in occupation of the premises as monthly tenants ?

(4) Did the plaintiff on 27.11.76, send the defendants a notice to quit the premises on or before end of February 1977 ?

(5) If the issues to be decided are concluded in favour of the plaintiff, is plaintiff entitled to eject the defendants ?

(13) Was there a valid notice to quit given to the defendants ?

(6) What sum is due as arrears of rent and damages ?

(8) Did the defendants construct a house which is described in the schedule to the plaint ?

(9) If so, is it open to the defendants to remain in occupation of the said premises free of rent until the said amount is set off ?

The learned Additional District Judge by his judgment dated 30th April 1980 held that the 2nd defendant occupied the premises as a monthly tenant of the plaintiff. He however rejected the copy of the notice to quit, on the ground that as the last portion of it was missing, there was nothing to show as to who sent it. He however proceeded to hold that as the defendants disclaimed tenancy under the plaintiff it was in law not necessary for the plaintiff to have given notice of termination of the tenancy. He held that the defendants were in arrears of rent and entered judgment in favour of the plaintiff in terms of the prayer of the plaint and directed that they be ejected from the premises.

It would appear from the proceedings that the plaintiff had in the earlier action No. 10192/L, sued the defendants for a declaration of title and ejectment from the premises on the basis that they were trespassers. The defendants in that case pleaded that the 2nd defendant was the tenant of the premises under the plaintiff and that she was entitled to protection from ejectment under Rent Act No. 7 of 1972. The position of the defendants was upheld in that case and the plaintiff's action was dismissed.

The defendants preferred an appeal against the judgment entered against them in this action. The Court of Appeal by its judgment, dated 20.1.1984, allowed the defendants' appeal and while upholding that part of the judgment entered in favour of the plaintiff for the sum of Rs. 816 being arrears of rent up to the end of February 1977, set aside the order of ejectment of the defendants. In the Court of Appeal the District Judge's finding that the tenancy of the premises was under the plaintiff was not challenged by the defendants. The judgment of the Court of Appeal was founded on the ground that since the defendant was a tenant under the plaintiff of rent controlled premises, the plaintiff could succeed in getting a decree for ejectment on the ground of arrears of rent, only if she established the requirements of section 22(3) and 22(6) of the Rent Act. The court held that since the plaintiff had failed to establish that she had given three months notice of the termination of the tenancy to the defendants the court had no jurisdiction to grant the relief of ejectment of the defendants. The court held that it was incumbent on the plaintiff to given notice of termination of tenancy to the tenant as required by section 22(3) (*a*) of the Rent Act even though the tenant had repudiated the contract of tenancy and did not claim the benefit of the Rent Act. In reaching this conclusion the Court of Appeal followed the judgment of the last Supreme Court in *Edirisinghe v. Patel* (1) which held that the denial of the tenancy by the defendants will not relieve the plaintiff of the burden of establishing the statutory requirement upon which an order for ejectment could be made.

In the appeal before us counsel for the plaintiff-appellant relied strongly on the decision of this court in *Kandasamy v. N. S. Gnanasekeram*, (2). In that case too the premises were subject to Rent Act No. 7 of 1972 and the plaintiff sought to eject his tenant on the ground that the premises were reasonably required for his use and occupation. A year's notice of the termination of the tenancy had been given by him to the defendant in terms of section 22(6) of the Rent Act. The defendant in his answer denied that he was the tenant of the premises and stated that one Sittampalam was the tenant of the premises and that he was occupying a part of the premises with the leave and licence of Sittampalam. The defendant did not and could not claim, in view of his denial of the tenancy, the protection of the Rent Act. At the trial counsel for the plaintiff raised the following issues :–

1. Is the defendant the tenant of the premises in suit ?

2. In denying the tenancy, is the defendant acting in collusion with Sittampalam ?

3. (a) Is the plaintiff entitled for a writ of ejectment against the defendant ?

   (b) What damages is the plaintiff entitled to ?

The issues show that counsel based the plaintiff's right of ejectment and damages on the defendants repudiation of the tenancy and abandoned the plea of reasonable requirement. Counsel for the defendant however raised the following issues :–

4. Are the said premises reasonably required for the use and occupation of the plaintiffs as their residence ?

5. If issue 4 is answered in the negative, are the plaintiffs entitled to the relief prayed for in the plaint ?

Counsel for the plaintiff thereupon raised the following further issues :–

6. Even if the premises are not required by the plaintiffs for their residence and if issue (1) is answered in the affirmative, as the defendant denies tenancy are plaintiffs entitled to judgment as prayed for ?

Counsel for the defendant then raised the additional issues :–

7. If issue (1) is answered in the affirmative and issue (4) in the negative can the plaintiffs have and maintain this action ?

The trial Judge held on the evidence that the defendant was the tenant of the premises under the plaintiffs and answered issues 3 and 6 in the affirmative and that the defendant was liable to be ejected. He also answered issue (4) relating to reasonable requirement which was abandoned by the plaintiff, also in the plaintiff's favour. He accordingly ordered ejectment of the defendant. The Court of Appeal affirmed this finding of reasonable requirement which was challenged in appeal. The Supreme Court set aside this finding of reasonable requirement, but held that the District Judge came to a correct finding that the

plaintiff was entitled to the order of ejectment of the defendant on the basis of the defendant's defence that he was never a tenant of the said premises.

Counsel for the defendant-respondents in turn relied on the judgement in *Edirisinghe v. Patel* (supra) which held that once it was established that the defendant was the tenant of rent- controlled premises he could not be ejected except upon any one of the grounds stipulated by the Rent Restriction Act, even though the defendant had denied that he was a tenant of the plaintiff. In that case Pathirana, J. said that –

"once a landlord comes into court on the averment that the person in occupation of the premises is his tenant and established this fact, then such a person cannot be elected from the premises unless the landlord satisfies the requirements of any of the grounds set out in section 13 or on the ground of sub-letting under section 9 of the Rent Restriction Act. A tenant may deny tenancy for a number of reasons but once it is proved that he is a tenant, ipso facto he is entitled to the protection of the Rent Restriction Act, as he is a protected tenant . . . . . "

Sirimanne, J., took the same view and stated–

"It was incumbent on the plaintiff, quite apart from what the defendant may have pleaded, to prove that the defendant was in arrears of rent and/or the defendant had sublet the premises in terms of section 13(1) and 9(1) of the Rent Restriction Act. If they failed to prove either of these grounds then the action must fail . . . ."

"The position remained unaffected whatever be the plea of the defendant."

In the present case, the Court of Appeal has agreed with the judgment in *Edirisinghe v. Patel* (supra) and concluded that since the trial judge has found that the 2nd defendant was a tenant of the premises, it was incumbent on the plaintiff not only to establish that the 2nd defendant was in arrears of rent for three months or more, as required by section 22(1)(*a*) of the Rent Act, but also that she gave at least 3 months notice of the termination of the tenancy as required by section 22(3)(*a*) of the Act, to enable her to obtain an order of ejectment. It held that the denial of the tenancy by defendants will not relieve the plaintiff of the burden of establishing the statutory

requirements upon which an order for ejectment could be made. The court distinguished the case of *Kandasamy v. Gnanasekeram* (supra) on the ground that the plaintiffs in the latter case abandoned, at the stage of framing issues, their claim for an order of ejectment under section 22(2)(*b*) of the Rent Act on the ground of reasonable requirement and confined their claim for ejectment on grounds other than those contemplated by section 22 of the Rent Act.

I find it difficult to follow the distinction drawn by the Court of Appeal. With all respect to that court I cannot perceive any substance in the distinction sought to be drawn by that court. In *Kandasamy's* case, in view of the denial of the defendant that he was a tenant of the plaintiff the plaintiff raised the issue, is the defendant a tenant of the premises in suit ? And that issue was answered in the affirmative by the trial Judge. There was no dispute that the premises in suit in that case were governed by the provisions of the Rent Act. On the basis of the judgment of Pathirana, J., and Sirimanne, J. in *Edirisinghe v. Patel* (supra), the plaintiff's action should have been dismissed. According to that judgment, as the plaintiff had come into court averring that the defendant was his tenant and had established the fact, then the "defendant cannot be ejected from the premises unless the landlord satisfies the requirements of any one of the grounds set out in section 13 or section 9 of the Rent Restriction Act".

The reconciliation by the Court of Appeal of the two cases namely, *Edirisinghe v. Patel* (supra) and *Kandasamy v. Gnanasekeram* (supra) is untenable. The latter case is, in my opinion, in conflict with *Edirisinghe v. Patel,* and departs from the ruling in that case.

The court in *Edirisinghe v. Patel* had adopted a very literal interpretation of the language of section 9 and 13 of the Rent Restriction Act. In doing so it had not taken into consideration a very relevant principle of law "which has its basis in common sense and common justice, that a man should not be allowed to blow hot and cold, to affirm at one time and deny at another" as stated by Victor Perera, J. in *Kandasamy v. Gnanasekeram* (supra). It does not appear to me to be sound law to permit a defendant to repudiate a contract and thereupon specifically to rely upon a statutory defence arising on the contract which he repudiates.

How can a person who denies the tenancy be entitled to insist on a proper termination of the tenancy which, according to him, never existed. A defendant cannot be allowed to deny the existence of the contract of tenancy and in the same breath claim the benefits of that

contract ; the doctrine of "approbate and reprobate" forbids this. It is only when the defendant admits the contract that he can claim the benefits of the contract.

In *Muttu Natchia v. Patuma Natchia,* (3) Browne, J. with Lawrie A.C.J., agreeing, held that a tenant who disclaims to hold of his landlord and puts him at defiance is not entitled to have the action against him dismissed for want of a valid notice to quit. This ruling has stood the test of time and has been accepted as part of our law – vide *Sundra Ammal v. Jusey Appu* (4), *Pedrick v. Mendis* (5), *Hassan v. Nagaria* (6), *Mansoor v. Umma* (7), *Subramaniam v. Pathmanathan* (8).

"In the case of *Doe v. Frowd* (9) Best, C.J., ruled that –

> "a notice to quit is only requisite where tenancy is admitted on both sides and if a defendant denies the tenancy there can be no necessity for a notice to end that which he says has no existence."

When the defendant disclaims the tenancy pleaded by the plaintiff he states definitely and unequivocally that there is no relationship of landlord and tenant between the plaintiff and him to be protected by the Rent Act.

The rationale of the above principle appears to be that a defendant cannot approbate and reprobate. In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts the one he cannot afterwards assert the other ; he cannot affirm and disaffirm. Hence a defendant who denies tenancy cannot consistently claim the benefit of the tenancy which the Rent Act provides. For the protection of the Rent Act to be invoked the relationship of landlord and tenant, between the plaintiff and him which is governed by the Rent Act should not be disputed by the defendant.

The fundamental object of the Rent Act is to give the tenant security of tenure by preventing the landlord from evicting him without an order of court and forbidding the court to make an order for possession except on certain specific grounds. That security of tenure is not to be vouched to a person who repudiates the very basis of the Act, viz ., the relationship of landlord and tenant and who claims possession of the premises, not under the plaintiff, but against him. The provisions of

the Rent Act must be construed reasonably with a view to promote the object of the Act and not to defeat its purposes. Where literal interpretation would tend to defeat the obvious intention of the legislature or to lead to a wholly unreasonable result, it is to be rejected in favour of a purposive construction. This process may involve putting a construction which modifies the literal meaning of the words of the Act, in order to produce a reasonable result. Where the defendant by his conduct or pleading makes it manifest that he does not regard that there exists the relationship of landlord and tenant between the plaintiff and him, it will not be reasonable to include him in the concept of "tenant" envisaged by section 22 of the Rent Act although the court may determine, on the evidence before it, that he is in fact the tenant of the plaintiff. Since such a person had by his words or conduct disclaimed the tenancy which entitles him to the protection of the Rent act, it will be anomalous to grant him the protection of a tenancy, which, according to him, does not exist. Invito beneficium non datur (D50. 17. 69) said the Romans–the law confers upon a person no right or benefit which he does not desire. Whoever abandons or disclaims a right will lose it. The defendant has to blame himself for this consequence.

The decision in *Edirisinghe v. Patel* (supra) has erred in overlooking the above principles and in holding the conduct of the defendant as irrelevant. Hence it was not correctly decided and should not be followed. I prefer to follow the judgment of Victor Perera, J. with whom Wimalaratne, J. and Colin-Thome J. agreed, on the question in issue. As the 2nd defendant is the tenant of the plaintiff and as she had wrongfully denied the tenancy, she was not entitled to the benefit of the provisions of the Rent Act. It was not necessary to give any notice of termination of the tenancy to her. Hence, the plaintiff is entitled to judgment as prayed for. The Court of Appeal on a wrong conception of law has reversed the judgment of the District Judge directing the ejectment of the defendants.

I set aside the judgment of the Court of Appeal and allow the appeal and restore the judgment of the District Court. The defendant-respondents will pay the costs of the plaintiff in all three courts.

WIMALARATNE, J.– I agree.

COLIN-THOMÉ, J. – I agree.

RANASINGHE, J. – I agree.

WANASUNDERA, J.

I regret that I cannot agree to the judgment subscribed by the majority.

There is undoubtedly a series of old decisions to the effect that a tenant who disclaims the contract of tenancy would not be entitled to plead the want of a valid notice to quit. But these cases were decided in the context of the common law. The question now before us is : Have the statutory provisions of the Rent Act, No. 7 of 1972, made inroads into this principle ? I am inclined to think they have.

Under the common law relating to periodic tenancies, a notice to quit is required to bring the tenancy to an end prior to the filing of an action for ejectment. The Rent Act has created a statutory relationship between landlord and tenant drastically altering some common law concepts and has been designed to ensure a great measure of security and protection to tenants.

For the purpose of this appeal, it would be adequate if we look at only a few of the relevant provisions of the Rent Act dealing with proceedings for ejectment. The statutory provisions severely restrict proceedings for the eviction of a tenant, and the protection afforded to the tenant is secured by provisions in the nature of a limit on the jurisdiction of the court and also by requiring vigilance on the part of court in seeing compliance with the statutory provisions. The main provision, section 22(1), states that "no action or proceedings for the ejectment of the tenant . . . . . *shall be instituted in or entertained by any court,* unless . . ." and sets out the requirements. (The emphasis is by me.)

The provisions of section 22 (3), which are directly applicable to this matter, are as follows :–

> "The landlord of any premises referred to in subsection (1) or subsection (2) *shall not be entitled to institute, or as the case may be, to proceed with, any action or proceedings for the ejectment of*

the tenant of such premises on the ground that the rent of such premises has been in arrear for three months or more, or for one month, as the case may be, after it has become due,–

(*a*) if the landlord has not given the tenant three months' notice of the termination of tenancy if it is on the first occasion on which the rent has been in arrear, two months' notice of the termination of tenancy if it is on the second occasion on which the rent has been in arrear and one month's notice of the termination of tenancy if it is on the third or any subsequent occasion on which the rent has been in arrear ; or

(*b*) if the tenant has prior to the institution of such action or proceedings tendered to the landlord all arrears of rent ; or

(*c*) if the tenant has, on or before the date fixed, in such summons as is served on him, as the date on which he shall appear in court in respect of such action or proceedings, tendered to the landlord all arrears of rent."

(Once again the emphasis is by me.)

It is evident from the above that this statutory provision is in the nature of a bar preventing the court from entertaining or proceeding with a matter in the absence of a requisite notice, which itself has to be computed and is made dependent on the existence of certain other circumstances. There is a duty on the court to give effect to this provision and it is incumbent on the court to see that the requirements set out in the statute are established to its satisfaction. Having regard to these statutory provisions, there is no room for the application of the principle laid down in the cases referred to in the majority judgment.

In this view of the matter, I am of the view that *Edirisinghe v. Patel,* (1) decided by Pathirana, J. and Sirimanne, J. has been rightly decided and the Court of Appeal has also come to a right conclusion.

For these reasons I would dismiss the appeal with costs.

Appeal allowed.