

WAHAB
v.
JAYAH

COURT OF APPEAL.

B. E. DE SILVA, J. AND BANDARANAYAKE, J.

S.C. (C.A.) 30/76.

M. C. KANDY 152/RE.

JANUARY 11, 1985.

Landlord and tenant – Rent and ejectment – Vesting of premises under the Ceiling on Housing Property Law No. 1 of 1973, Sections 8, 10, 11 (1) and 15 (2) – Agreement to sell – Does it amount to a disposal of the premises ?

The plaintiff sued his tenant the defendant on the ground of arrears of rent. The defendant pleaded that the premises had vested in the Commissioner of National Housing. After trial the Judge held that the defendant was in arrears of rent but as the premises were vested in the Commissioner of National Housing, the plaintiff could not maintain this action for ejectment of the defendant.

Held—

Under section 10 of the Ceiling on Housing Property Law any person who owns any house in excess of the permitted number of houses may within 12 months from that date dispose of the houses with notice to the Commissioner unless the tenant had made an application with simultaneous notice to the owner for the purchase of such house.

The defendant had made no application to purchase the premises in suit within the statutory period and the plaintiff claimed he disposed of the property prior to the material date. But the deed claimed to be a disposition of the property was an agreement to sell the premises for Rs. 30,000 subject to certain conditions. Such a deed is not a deed disposing of the premises. Hence the premises by operation of law automatically vested in the Commissioner of National Housing. No vesting order as such was necessary.

Cases referred to :

- (1) *Carter v. Carter* [1896] 1 Chancery Division 62, 67.
- (2) *Visvalingam v. Gajaweera* (1954) 56 NLR 111.
- (3) *Tillekaratne v. Coomarasingham* (1926) 28 NLR 186.

APPEAL from judgment of the District Court. of Kandy.

H. L. de Silva, P.C. with *M. S. M. Nazeem* for the plaintiff-appellant.

S. C. B. Walgampaya for the defendant-respondent.

February 15, 1985.

B. E. DE SILVA, J.

The plaintiff-appellant has filed this appeal from the judgment of the learned Additional District Judge dismissing the appellant's action for ejection of the defendant from the premises in suit.

The appellant filed this action for the ejection of the defendant from the premises in suit alleging that the defendant was in arrears of rent in violation of the provisions of the Rent Act.

The defendant filed answer and pleaded that the appellant had received rent in excess of the authorised rent and giving credit to the defendant for such excess payments. There was a sum of Rs. 100 due as arrears of rent. The defendant further pleaded that the premises in suit had vested in the Commissioner of National Housing from the 13th of January, 1974 and under the provisions of the Ceiling on Housing Property Law No. 1 of 1973 and that the appellant cannot maintain this action for ejection of the defendant from the said premises.

After trial the learned Additional District Judge held that the defendant was in arrears of rent in a sum of Rs. 1000 and that the appellant was entitled to recover the said sum as arrears. In regard to the plaintiff's claim for ejection the learned Additional District Judge held that the premises in suit had vested in the Commissioner of National Housing and that the plaintiff cannot maintain this action for the ejection of the defendant.

At the trial evidence was led by the appellant and defendant on matters relevant to the issues in this case. At the hearing of this appeal the defendant did not challenge the findings of the learned Additional District Judge that the defendant was in arrears of rent.

The main matter that was urged in appeal by the appellant was whether the learned Additional District Judge had erred in holding that the premises in suit vested in the Commissioner of National Housing and that the appellant was not entitled to maintain this action for the ejection of the defendant.

The appellant's case was that the Ceiling on Housing Property Law No. 1 of 1973 came into operation on 13.1.73. Under Section 8 of the said Law the appellant made a statutory declaration P 1 dated 4.4.73 which included the premises in suit as a house owned by the appellant in excess of the permitted number of houses which the appellant did not propose to retain. Under section 10 of the said Law any person who owns any house in excess of the permitted number may within 12 months from that date *dispose* of such house with notice to the Commissioner unless the tenant has made an application with simultaneous notice to the owner for the purchase of such house.

It was the case of the appellant that he did *dispose of* the said house on 10.1.74 prior to the material date 13.1.74 by deed of agreement P 2 which was executed by his wife as owner and that the Commissioner was duly informed by P 3 dated 14.2.74. The defendant had made no application to purchase the said house within the statutory period or at any time, although the appellant gave the defendant the option to purchase the premises by P 6 dated 4.4.73.

The Commissioner had considered P 1 and upon the receipt of P 3 he issued a vesting order P 4 dated 23.5.74. P 4 contains a list of houses which have vested by operation of law on the Commissioner and does not contain the premises in suit. The evidence of the officer from the Department of National Housing was that the premises in suit had not vested in the Commissioner.

The appellant referred to the principles set out in the decision in *Carter v. Carter* (1). The appellant submitted that upon P 2 he had *disposed* his interests in the premises in suit, within the meaning of section 10 of the Ceiling on Housing Property Law and that the premises had not vested in the Commissioner of National Housing. P 2 is an agreement entered into by the appellant with one Velu to sell the premises to the latter subject to the conditions set out in P 2. Upon P 2 the plaintiff had agreed to sell the premises to Velu for a sum of Rs. 30,000 and the purchaser Velu had to pay a sum of Rs. 2000 as an advance on the date of the execution of the agreement. Therefore the purchaser had to pay a sum of Rs. 2000 per year for a period of 14 years commencing from the 1st day of January, 1975 and the last payment to be made on the 1st of January, 1989. Upon a default on the part of the purchaser of any one payment as aforementioned he loses his right to purchase the premises and he was requested to yield up possession to the vendor.

The purpose of the Ceiling on Housing Property Law was to see that no person owns any house in excess of the permitted number of houses after 14.1.74. The question does arise whether by the agreement P 2 the appellant *had disposed* of the premises in suit within the meaning of section 10 of the Law. Section 10 provides thus :

"Where, on the date of commencement of this Law, any person owns any house in excess of the permitted number of houses, such person may, if such person is an individual, within a period of twelve months from such date, dispose of such house with notice to the Commissioner unless the tenant of such house or any person who may under section 36 of the Rent Act No. 7 of 1972, succeed to the tenancy of such house, has made application with simultaneous notice to the owner for the purchase of such house".

It would be relevant to consider the provisions of section 10 as set out in the Sinhala Law which reads thus :

"මේ පනත ආරම්භ වන දිනයේදී එම පුද්ගලයෙකුට අවසර ලත් නිවසක සංඛ්‍යාවට වැඩිවූයේ වූ එම නිවසක අයිතිවී තිබෙන අවස්ථාවක, ඒ නිවසකට පුද්ගලයෙකු විසින් හෝ 1972 අංක 7 දරන කෙටුම්පත් පනතේ 36 වන වගන්තිය යටතේ ඒ නිවසක නිවාස බිඳ දීම අනුමැත වන එම පුද්ගලයෙකු විසින් ඒ නිවසට මිලට පැමිණි පැහැ අයිතිකරුවාට එවර දැනුම්දීමේ කොමසාරිස්වරයා වෙත අදාළවූ ඉදිරිපත් කර ඇතහොත් මිස ඉහත නි දිනයේ සිට මාස හයකට පරිවර්තනය කළහොත් ඒ අයිතිකරු විසින් කොමසාරිස්වරයාට දැනුම් දී නිවසක විකිණිය යුතුය."

I am unable to hold that upon the agreement P 2 relied upon by the appellant that the latter *had disposed* of the premises in suit within the meaning of section 10 of the Ceiling on Housing Property Law. If the premises had not been disposed of before 13th January, 1974 by virtue of section 11 the premises vest in the Commissioner of National Housing. Section 11 (1) provides thus :

"Any house owned by any person in excess of the permitted number of houses which has not been disposed of within the period within which such person may dispose of such house in accordance with the provisions of section 10 shall on the termination of such period vest in the Commissioner".

There is no need for a vesting order if the premises had not been *disposed of* under section 10. It automatically vests in the Commissioner of National Housing under section 11 (1). In the circumstances the premises had vested in the Commissioner of National Housing.

It was submitted on behalf of the appellant that the defendant had entered the premises as appellant's tenant and in the circumstances he must first give up possession and it was only then that it was open to him to litigate in regard to title. In support of this submission reliance was placed on the decision in *Visvalingam v. D. de S. Gajaweera* (2). The common law principle that a tenant who entered into premises as a tenant cannot without giving up possession dispute the title of the landlord is not applicable in this case as a statute overrides the common law. Section 15 (2) of the Ceiling on Housing Property Law provides thus :

"Where any house is vested in the Commissioner-under this Law, the Commissioner shall have absolute title to such house and free from all encumbrances, and such vesting shall be final and conclusive for all purposes against all persons whomsoever, whatever right or interest they have or claim to have to or in, such house".

The defendant in the instant case can plead as an answer to landlord's claim for ejectment that the landlord's title has been superseded by title paramount and there has been an eviction by title paramount in this case. Vide *Tillekaratne v. Coomarasingham* (3). In the circumstances of this case the appellant is not entitled to maintain this action for the ejectment of the defendant. The judgment of the learned Additional District Judge is affirmed and the appeal is dismissed with costs.

BANDARANAYAKE, J. – I agree.

Appeal dismissed.
