MUSTHAPA THAMBY LEBBE

v.

RUWANPATHIRANE

COURT OF APPEAL.
H. A. G. DE SILVA, J. AND DHEERARATNE, J.
C. A. 95/81 (F).
D. C. GAMPOLA 709/L.
OCTOBER 18, 1985.

Landlord and tenant–Rent Act s. 22 (1) (d)–Nuisance–Deterioration.

Replacing a bucket latrine with a water-sealed latrine and soakage pit does not fall within the meaning of the expression "deterioration" as used in s. 22 (1) (*d*) of the Rent Act.

P. A. D. Samarasekera, P.C. with *G. L. Geethananda* for plaintiff-appellant.

Ikram Mohamed with *Wijedasa Rajapaksa* and *Miss Janakie De Silva* for defendant-respondent.

Cur. adv. vult.

December 20, 1985.

DHEERARATNE, J.

This appeal relates to certain grounds for ejectment of a tenant by a landlord, specified in section 22 (1) (*d*) of the Rent Act No. 7 of 1972, which section as truncated by me for the purpose of this judgment, will read as follows:–

"22 (1) notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises . . . . . shall be instituted in or entertained by any court, unless where–

(*d*) the tenant. . . . . has in the opinion of court, been guilty of conduct which is a nuisance to adjoining occupiers. . . . . or the condition of the premises has, in the opinion of court deteriorated owing to acts committed by, or to the neglect or default of the tenant. . . . . "

In this case the tenant, without the permission of the landlord, demolished a bucket latrine which was a part of the rented premises, and built in its place a new water sealed latrine. The soakage pit of the new latrine was constructed in such a manner, as to take in a few feet from the adjoining land owned by its occupier. The landlord thereupon terminated the tenancy and sued the tenant in ejectment on two causes of action, both based on section 22 (1) (*d*). The learned trial judge held against the landlord on both the causes of action and the landlord has now appealed from that judgment.

The 1st cause of action related to the tenant's building the soakage pit of the new latrine on a portion of the adjoining land owned by its occupier, and thereby causing a nuisance to the latter. At the trial, the adjoining occupier was called as a witness for the tenant, who, for reasons best known to him, categorically stated, that the tenant did not cause any nuisance to him by the construction of the soakage pit partly on his land. On this evidence the learned trial judge correctly held that the first cause of action of the landlord should fail. However, I may add in passing, that, even if this adjoining occupier were to say that such an act of the tenant did cause him a nuisance, whether by such evidence, the words of section 22 (1) (*d*) "guilty of conduct which is a nuisance to adjoining occupiers" could have been satisfied, is a moot point which does not require our opinion here.

The second cause of action relied upon by the landlord, is that the condition of the premises has deteriorated owing to an act committed by the tenant; the act being that the tenant had demolished a part of the premises, namely the bucket latrine. The learned trial judge held against the landlord on this matter too, and it is this finding which is strenuously canvassed before us.

It is contended by the learned counsel for the landlord, that section 22 (1) (*d*) should be interpreted by us against the backdrop of the common law rights of landlord and tenant. He contends that a tenant has neither a right to demolish a part of the premises let, nor a right to construct a new structure in its place. Therefore, contends learned counsel, both these acts of the tenant being unlawful, we should look only at the act of demolition of the bucket latrine in this case in order to come to a finding whether the condition of the premises has deteriorated. However attractive this argument may seem to appear, I do not think that the dictates of commonsense would permit us to turn a blind eye to the act of building a new water-sealed latrine.

The learned counsel for the landlord further contends that if we do not view the act of demolition of the bucket latrine in isolation in our attempt to interpret the provisions of the Rent Act, we would in effect open the door for any tenant of a premises, without the permission of a landlord, to break a cement floor and replace it with a teak floor, to demolish a brick wall and rebuild it with marble; and for that matter, demolish the premises, part by part and rebuild it with the most expensive material. Perhaps, learned counsel is correct in his submission that such would be the result.

Unfortunately, our duty is not to read into section 21 (1) (*d*) what we expect to find there from the point of view of the common law, but to find out what the legislature intended to mean by that section. Under the common law, there may be many a transgression by a tenant of his landlord's rights. A landlord may in terms of the contract, terminate the tenancy by giving notice to the tenant. If the tenant does not quit, he will be liable to be ejected by due process of law. That is the position under the common law; but now the statute has intervened. A landlord may terminate a tenancy by giving notice, but, he is entitled to sue a tenant in ejectment only on the grounds specified in the statute.

The quintessence of the ground for ejectment specified in the last part of section 22 (1) (*d*) appears to me to be "deterioration" of the condition of the premises. "Deterioration" according to the Chambers 20th Century Dictionary means "the act of making worse or the process of growing worse". This "deterioration" should be attributable to acts committed by or to the neglect or default of the tenant or of the classes of persons mentioned. To my mind, the tenant in this case by his act has certainly not caused deterioration of the condition of the premises, I think, I would be straining the language of the section 22 (1) (*d*) far beyond its natural meaning, if I were to include within its ambit the acts committed by the tenant in this case. On the other hand, if it was intended to include causing of any structural alterations to a premises by a tenant as a ground for ejectment, I would expect the legislature to have plainly said so. For these reasons it appears to me that the learned trial judge was correct in holding against the landlord on the 2nd cause of action too.

However, there is one matter which I think should require our intervention. The tenant in his answer claimed from the landlord a sum of Rs. 2,300 as compensation for the improvement he has caused by constructing the water-sealed latrine and this claim the learned trial judge allowed. I cannot find any principle of law upon which, a tenant, who makes such an improvement without the consent of a landlord, and who continues to enjoy that improvement, can successfully ground a claim for compensation. I would disallow this claim and subject to this variation, affirm the judgment of the learned trial judge dismissing the landlord's action.

This appeal is dismissed without costs.

H. A. G. DE SILVA, J. – I agree.

Appeal dismissed subject to variation.