

SHELTON DE SILVA
vs
SHIRANI HELEN FERNANDO

SUPREME COURT
WIGNESWARAN, J.
DE SILVA, J. AND
TILAKAWARDANE, J.
S. C. APPEAL NO. 55/2003
C. A. 750/90 (F)
D. C. COLOMBO 6763/RE
10th FEBRUARY, 2004

Landlord and Tenant - Classification of one house owner entitled to recover a house under section 22 (2) (i) (bb) (ii) of the Rent Act, in the light of section 22 (7) of the Act.

Special leave to appeal was granted upon the question whether in the definition of "specified date" in section 22 (7) of the Rent Act "occupation" means

occupation *per se* or is restricted to occupation as tenant of the lawful owner of the premises.

Held:

Per Wigneswaran, J

" Section 22 (7) seems to have contemplated in the case falling within the ambit of section 22 (2) (i) (bb) (ii) only those cases where there were transfers over the head" as it were of the tenant from one owner landlord to another owner landlord that no person shall be able to purchase a property already in the ownership of an owner landlord over the head of a tenant in order to oust such tenant. When the interpretation of "specified date" in section 22 (7) refers to "came in to occupation of such premises" the word "premises" must be interpreted as premises where the present owner landlord purchased or inherited or received as gift from a previous owner landlord. Where there was no such purchase, inheritance or gift the tenancy in respect of the premises though it was continued as far as the tenant and the premises are concerned it would not prevent the new single house owner landlord from ejecting the tenant by depositing five years rent subject to such notices, etc, being given. In other words the prohibition in section 22 (7) would not apply where there was no nexus in respect of ownership between the previous landlord and the present landlord. It is the single house ownership that gives the new owner landlord the right of ejectment.

Cases referred to :

1. *Nandadeva v Gulamhussain* (1994) Part II BASLJ page 12
2. *Sumanasekara v Peiris* (1993) 3 Sri LR 281
3. *Imbuldeniya v D. De de Silva* (1987) I Sri LR 367
4. *Sriani Peiris v Mohamed* (1986) 2 Sri LR 384
5. *Devarajah and Another v Ariyatunga* (1995)2 Sri LR 34

APPEAL from the judgment of the Court of Appeal.

P. Vimalachandran with *A. P. Niles* for substituted defendant - respondent - petitioner

N. S. A. Gunatillaka, P. C. with *N. Mahendra* for substituted plaintiff - appellant - respondent

October 19, 2004

WIGNESWARAN J.

This appeal centres around the interpretation of the phrase “specified date” in Section 22 (7) of the Rent Act, No. 7 of 1972 read with its amendments, in relation to occupation by a tenant. Special leave to appeal in this regard was granted on 06.08.2003.

In order to so interpret the phrase, in its context, it is essential to start from the beginning setting out the relevant facts of this case.

One Shelton de Silva, husband of the original Defendant Sybil de Silva, was tenant of premises bearing No. 67, Kanatta Road (later D. S. Senanayake Mawatha) Borella from 1938 under one Idris Zadoon (vide P 8 & P9).

While the contract of tenancy between Shelton de Silva and Zadoon was in effect, Partition Case No. 3747/P in the District Court of Colombo, to which Zadoon was not a party, conferred ownership over the premises above mentioned, on the original Plaintiff of this case, viz. W. Irene Fernando, by Certificate of Sale No. 661 dated 23.09.1959.

After the purchase Shelton de Silva became the tenant of the original Plaintiff, W. Irene Fernando. This position is not disputed.

Shelton de Silva died on 30.06.1961. Thereafter his widow Sybil de Silva became the tenant as from 01.07.1961. The plaint dated 23.01.1987 accepted the said Sybil de Silva, the original Defendant, as the tenant of the original Plaintiff, W. Irene Fernando.

The original Plaintiff filed this action on the basis that she had deposited with the Commissioner of National Housing the equivalent of 5 years' rent (at the rate of Rs. 165.66 per month) and had sent notice to quit in terms of the proviso to Section 22 (6), requiring the premises back in terms of Section 22 (2) (bb) (ii), since she had no other residential premises.

The original Defendant denied that the original Plaintiff was entitled to file this action since the latter had acquired the ownership of the premises, occupied by the original Defendant, on 23.09.1959 which was after the specified date as contemplated by Section 22 (7) of the Rent Act.

The District Judge by judgment dated 05.12.1990 upheld the argument of the original Defendant and dismissed the original Plaintiff's action. The original Plaintiff appealed to the Court of Appeal. While it was pending before that Court, both the original Plaintiff and the original Defendant died, and substitutions were effected. The Court of Appeal reversed the order of the District Judge and entered judgment in favour of the substituted Plaintiff-Appellant after setting aside the judgment of the District Judge.

The substituted Defendant-Respondent-Petitioner has appealed to this Court.

Basically the question of law to be examined is the meaning of "occupation" in the definition of "specified date" in terms of Section 22 (7) of the Rent Act.

Let us first examine the relevant Sections.

Section 22 (2) (i) (bb) (ii), under which this action was filed reads thus-

"Notwithstanding anything in any other law, no action or proceedings for the ejection of the tenant of any residential premises the standard rent (determined under Section 4) of which for a month exceeds one hundred rupees shall be instituted in or entertained by any Court unless where in the case of premises let to a tenant whether before or after the date of commencement of this Act and where the landlord is the owner of not more than one residential premises the landlord of such premises has deposited prior to the institution of such action or proceedings a sum equivalent to five years' rent with the Commissioner for National Housing for payment to the tenant".

The notice was given under the proviso to Section 22 (6) which reads thus:

"Provided that the landlord of any premises referred to in paragraph (bb) of subsection (1) or paragraph (bb) of subsection (2) may institute an action or proceedings for the ejection of the tenant of such premises if such landlord has given to such tenant six month's notice in writing of the termination of the tenancy".

The relevant part of Section 22 (7) which needs consideration by this Court reads as follows:-

“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 subsection 2 (i) shall be instituted (a) (b) where the landlord is the owner of not more than one residential premises on the ground that (i) (ii) the landlord of such premises has deposited prior to the institution of such action or proceedings a sum equivalent to five years’ rent with the Commissioner for National Housing for payment to the tenant, 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

“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 this Act or Section 18 of the Rent Restriction Act (No. 29 of 1948) came into occupation of the premises”.

Six months’ notice in terms of the provision to Section 22 (6) had been given and five years’ rent in terms of Section 22 (2) (i) (bb) (ii) had been deposited prior to the institution of this action. That the standard rent exceeds Rs. 100 per month is not disputed. Thus the question that remains to be answered is whether the bar for the recovery of possession in terms of Section 22 (7) would apply to the substituted Plaintiff-Appellant-Respondent or not.

The substituted Defendant-Respondent-Petitioner’s position is that what have to be examined in terms of Section 22 (7) are -

- (i) When did the plaintiff become the owner of the premises in suit?
- (ii) When did the defendant come into occupation?

Since in this case the original Defendant came into occupation as the wife of the original tenant in 1938 and the original Plaintiff became owner only in 1959, the bar in terms of Section 22 (7) it was argued, must apply. It was further argued that in any event the original Defendant succeeded to the tenancy of her husband who had continued as a tenant from 1938, after his death in 1961, and therefore the bar would still apply.

The arguments of the substituted Plaintiff -Appellant- Respondent were :

- (i) that the only contract of tenancy which existed between the original Plaintiff and the original Defendant was that which came into existence after the death of Shelton de Silva as held by the Supreme Court in S. C. Case No. 329/70 9F) (D. C. Colombo Case No. 11925/L)
- (ii) that the original Plaintiff purchased this property on 23.09.1959. The original Defendant had succeeded to tenancy as per judgment in Case No. S. C. 329/70 F only on 01.07.1961. Thus the tenant had come into occupation after 23.09.1959.
- (iii) According to the judgment in *Senerath Nandadeva Vs. Gulamhussain* (1) "specified date" in Section 22 (7) can only mean the date on which the tenant for the time being came into occupation "qua tenant".
- (iv) My judgment in *Sumanasekera Vs. Peiris* (2) at page 288 in favour of the Plaintiff in a similar case was also mentioned.

All these submissions would now be considered.

Quite advisedly the Supreme Court recorded the question of law in issue on 06.08.2003 as follows:

"Special leave to appeal is granted upon the question whether in the definition of " specified date" in Section 22 (7) of the Rent Act "occupation" means occupation per se or is restricted to occupation as tenant of the lawful owner of the premises.

It is important to remember that tenancy under the Rent Act does not arise only between the owner of a house and a person to whom the house has been let by such owner. For the purposes of the Rent Act a landlord need not be an owner. In fact Section 48 interprets a "landlord" as follows-

"Landlord in relation to any premises means the person for the time being entitled to receive the rent of such premises and includes any tenant who lets the premises or any part thereof to any subtenant".

The word "tenant" finds no place for interpretation in Section 48.

Section 22 (2) (i) (bb) (ii) mentioned above speaks of a landlord being an owner. It says "where the landlord is the owner of not more than one residential premises", the person who could deposit five years' rent with the Commissioner of National Housing must necessarily therefore be an owner. It is only an owner landlord who is the owner of not more than one residential premises who is contemplated in the said Section. Thus the landlord prior to 23.09.59 viz. Idris Zadoon, under the present law could not have deposited five years' rent and prayed for ejection because he was not an owner landlord.

Under Section 22 (6) too, the landlord referred to therein must necessarily be an owner landlord, since it is the landlord mentioned in Section 22 (2) (i) who is referred to in the said Section.

Thus when we examine the bar under Section 22 (7) we must be mindful of the said Sections referring to an owner landlord and not a landlord who is "for the time being entitled to receive the rent of such premises". The bar applies to owner landlords whose ownership was acquired on a date subsequent to the date on which the tenant came into occupation. That is, the bar applies to those owner landlords who had purchased the premises over the head, as it were, of the existing tenant. This pre-supposes a prior ownership by the previous landlord and such ownership passing over to the new owner landlord from the earlier owner landlord. But in this case the previous landlord was Idris Zadoon who had no ownership and was not a party to the partition case. The partition case No. 3747/P gave ownership to the original Plaintiff (in this case) and the husband of the original Defendant became the tenant of the owner landlord only after 23.09.59 though his tenancy under Idris Zadoon had continued from 1938. In this case the husband of the original Defendant was not a tenant under an owner landlord until after 23.09.59. There was no transfer of ownership from Idris Zadoon to the original Plaintiff. Idris Zadoon was not a party to the Partition Case in which the original Plaintiff obtained her Certificate of Sale.

But Section 22 (7) does not refer to the nature of transfer. It only refers to ownership being acquired by the landlord. Therefore it might be argued that a transfer however acquired by the new landlord owner, falls within the ambit of Section 22 (7). But a careful consideration of the entire section would bring out the fact that what is referred to by the Section is a transfer

from an owner landlord to another person who would become an owner landlord himself or herself. The relevant portion of the Section is as follows: "..... 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". The proviso pertaining to inheritance or gift from a parent or spouse applies only if such parent or spouse had acquired ownership prior to the specified date. That is, if from a date anterior to the time the tenant came into occupation of the premises the parent or spouse was the owner of the premises and had thereafter gifted or by his or her demise the property devolved on a plaintiff then such proviso to Section 22 (7) would apply. This reference in respect of parent or spouse in respect of inheritance or gift should explain the nature of purchase or inheritance or gift referred to in the Section. Because Section 22 (7) seems to have contemplated in the context of cases falling within the ambit of Section 22 (2) (i) (bb) (ii) only those cases where there were transfers "over the head", as it were, of the tenant from one owner landlord to another owner landlord. As such the ownership of the previous landlord which gets transferred to the present landlord seems to be the basis of the effect of Section 22 (7) on Section 22 (2) (i) (bb) (ii). That is, no person should be able to purchase a property already in the ownership of an owner landlord over the head of a tenant in order to evict such tenant. When the interpretation of "specified date" in Section 22 (7) refers to "came into occupation of the premises" the word "premises" must be interpreted as premises where the present owner landlord purchased or inherited or received as gift from a previous owner landlord. Where there was no such purchase, inheritance or gift, the tenancy in respect of the premises though it has continued as far as the tenant and the premises are concerned it would not prevent or prohibit the new single house owner landlord from ejecting the tenant by depositing five years' rent subject to such notices etc. being given. In other words the prohibition under Section 22 (7) would not apply where there was no nexus in respect of ownership between the previous landlord and present landlord. It is the single house ownership that gives the new owner landlord the right of ejectment. Thus occupation by the original Defendant's husband prior to the purchase by the original Plaintiff under a non - owner landlord was not a bar under Section 22 (7) of the Rent Act to institute action under Section 22 (2) (i) (bb) (ii) of the said Act. Section 22(2) (i)(bb)(ii) read with Section 22 (7) of the Rent Act deals

with a special class of cases where in addition to the basic requirements pertaining to standard rent, notice, deposit of five years' rent and single ownership, the current owner landlord must not have purchased, inherited or received in gift the premises in suit from a previous owner landlord who himself owned the premises when the tenant came into occupation. If the nexus of owner landlordship between the previous landlord and the later landlord was missing the provisions of Section 22 (7) would not preclude the institution of action against the tenant because the tenancy under the new owner landlord must be deemed to have been a fresh contract of tenancy. In other words, tenancy under a owner landlord which is the basis of an action under Section 22(2)(i)(bb)(ii) came into being for the first time under the new single house owner landlord. Thus even though the tenancy of the original tenant in this case continued from 1938, its character changed as soon as an owner landlord took over from a non - owner landlord. This change of character gave the new owner landlord the right to accept the original tenant in occupation, as a tenant afresh, consider him as a new tenant and file action under Section 22(2)(i)(bb)(ii) if the other ingredients were fulfilled. This would not have been possible if the previous landlord was himself an owner landlord, in which event the nexus on the basis of ownership between both of them would have precluded the new owner landlord from admitting the tenant on a new contract of tenancy. Section 22 (7) would then have barred the new owner landlord from bringing an action under Section 22(2)(i)(bb)(ii).

Section 22(1)(bb), Section 22(2)(bb) of the Rent Act must be distinguished. The question of ownership does not come into reckoning in a case falling under Section 22(1)(bb). Premises let to the tenant prior to 01.03.1972 reasonably required by the landlord for occupation is what is relevant under Section 22(1)(bb). On the other hand under Section 22(2)(bb) there are two limbs viz (i) premises reasonably required and (ii) premises in respect of which five years' rent has been deposited with the Commissioner of National Housing. In both cases the landlord must be the owner of not more than one residential premises and the premises may have been let prior to or after 01.03.1972.

Section 22 (7) refers to cases falling under Section 22(1) and Section 22(2)(i). The above said interpretation with regard to the provisions of Section 22 (7) in respect of ownership by the landlord applies to only that small category falling within Section 22(2)(i)(bb) and may not apply to other

cases. Therefore the interpretation of "specified date" in Section 22 (7) must take into consideration such special category of cases where single owner landlords have been given the right of ejection. Such single owner landlords should not have been persons who had purchased or inherited or received as gift from other owner landlords their properties "over the head" of the tenant. If the previous landlord was not an owner landlord, for the purposes of Section 22(2)(i)(bb)(ii) read with Section 22(7) the tenancy of the person continuing in occupation of the premises would get faulted in that the new owner landlord would bring into being a new tenancy. The tenancy under the non - owner landlord would cease to be while a new tenancy under the owner landlord would then come into being for the purposes enumerated in Section 22(2)(i) (bb)(ii). This is because of the fact that ownership of the new landlord is the basis for ejection under Section 22(2)(i)(bb)(ii) and that qualification he did not receive from the previous landlord.

In *Imbuldeniya Vs. D. de Silva* ⁽³⁾ a Full Bench of 5 Judges of the Supreme Court held as follows:

"A person without any title to a particular piece of property may grant a tenancy thereof to another person. Such a tenancy is valid between the landlord and tenant but is not binding on the true owner. It is not a valid letting and is ineffectual against him". (Chief Justice Sharvananda at page 371).

In the present case tenancy before 23.09.1959 was a tenancy under a landlord who had no title. That contract of tenancy though binding as between that landlord and tenant was not binding on the true owner/owners or any successor/successors of the true owner/owners. The original Plaintiff in this case was not a successor in title to the previous landlord. She did not step into the shoes of the previous landlord.

It is in the light of the above said interpretations and comments that the matters set out by the learned Counsel for the Substituted Defendant-Respondent- Petitioner have to be viewed.

The original Plaintiff no doubt became owner of premises in suit only on 23.09.59 and the husband of the original Defendant had come into occupation as far back as in 1938. But on the original Plaintiff becoming

owner of the premises by virtue of the Certificate of Sale dated 23.09.59 the husband of the original Defendant was per force brought into a new tenancy. It was a tenancy under the new owner landlord whose owner landlordship did not come about on account of a transfer, inheritance nor gift from the previous landlord. Thus the tenancy of the late husband of the late original Defendant must be deemed to have started after 23.09.1959.

There is no doubt that 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 and not mere occupation (Vide *W. B. C. Senerat Nandadewa Vs. Z. N. Gulamhussein (Supra)*). The phrase "tenant for the time being came into occupation" must be understood to mean a tenant and not a person claiming tenancy subsequently.

The question whether the original Defendant was occupying the premises in suit as from 1938 continuously even before and after 23.09.1959, is irrelevant since her late husband's tenancy started anew as from 23.09.1959, as stated above. On the death of Shelton de Silva on 30.06.1961 the original Defendant succeeded to the tenancy of her late husband in terms of Section 18 of the Rent Restriction Act, as from 01.07.1961. She succeeded to the rights and liabilities of her late husband. Since her late husband was not entitled to plead the bar under Section 22(7) the original Defendant too could not have pleaded such bar. The Supreme Court in any event in S. C. Case No. 329/70 F (D. C. Colombo Case No. 11925/L) had confirmed that the only contract of tenancy which existed between the original Plaintiff and original Defendant was that which came into existence after the death of Shelton de Silva and such contract of tenancy only from 01.07.1961 (vide also *Sriani Pieris Vs. Mohamed*⁽⁴⁾ and *Devarajah and another Vs. Ariyatunga*⁽⁵⁾). The occupation of the original Defendant as an occupier of the premises as from 1938 therefore does not come into focus in interpreting the provisions of Section 22(7) of the Rent Act. Therefore I would hold that the husband of the original Defendant started a new tenancy after 23.09.1959 and the Supreme Court has held that on his death a fresh contract of tenancy with the original Defendant came into existence as from 01.07.1961. Thus the bar under Section 22 (7) would not apply to the facts of this case.

I would therefore conclude that even though the Court of Appeal had not dealt with the question as to whether the occupation by the original Defendant's late husband prior to 23.09.59 as from 1938 would preclude the operation of Section 22(2)(i)(bb)(ii) in the light of the provisions of Section 22 (7), yet the conclusion of the Court of Appeal must be accepted as correct. We dismiss the appeal. Parties shall bear their own costs.

DE SILVA, J.— I agree.

TILAKAWARDANE, J.— I agree.

Application dismissed.
