SUMANADASA

v.

EDMUND

SUPREME COURT.
SAMARAKOON, C.J., ISMAIL, J. AND WANASUNDERA, J.
S.C. 45/80–C.A. 14/76–C. R. COLOMBO 4571/ED.
MAY 4, 5, 1981

Rent Act, No. 7 of 1972, section 22 (1) (d)–Action for ejectment on ground that tenant or person residing with him has been convicted of using premises for illegal purpose–Case records produced to establish convictions–Whether oral evidence admissible to relate such conviction to premises in suit–Evidence Ordinance, section 91–Need to establish that tenant had taken advantage of tenancy to commit offence–Burden of proof–Discretion of trial judge.

The plaintiff sued the tenant, the defendant, for ejectment from certain premises relying on the provisions of section 22 (1) (d) of Rent Act, No. 7 of 1972, which provided for institution of such an action where "the tenant or any person residing or lodging with him or being his sub-tenant has, in the opinion of the Court, been guilty of conduct which is a nuisance to adjoining occupiers or has been convicted of using the premises for an immoral or illegal purpose". The plaintiff produced several case records where the defendant's daughters and son-in-law had been convicted of offences in connection with possession of unlawfully manufactured liquor or possessing liquor in contravention of the law; in all these cases the address of the accused persons was given as the premises in suit. The scene of the offence was described in all cases except one as "at Ward Place, Borellla, within the jurisdiction of this Court". The plaintiff also led evidence to supplement this material by showing that the offences had been committed on or about the premises in suit.

It was submitted on behalf of the defendant in appeal that the plaintiff was confined to the records in the aforesaid criminal cases and that section 91 of the Evidence Ordinance precluded him from altering, amending or supplementing the record with any other evidence. it was also submitted that it was not sufficient that there is a conviction for a crime committed on the premises, but the plaintiff must show that the tenant had taken advantage of his tenancy and of the opportunity it afforded for committing the offence.

Held

(1) A plaintiff is entitled to lead oral evidence to establish the fact that a conviction was related to the premises in respect of which the defendant's ejectment is sought in the manner required by law. There is nothing in the provisions of section 91 of the Evidence Ordinance to prevent such evidence from being led.

(2) Upon the evidence led in this case there was ample material for the Court to infer that the convictions were associated with the premises in such a way as to constitute the user of the premises for an illegal purpose. There was evidence that the inmates of the premises had been prosecuted no less than in 20 cases; that the offences were committed in the premises and the close vicinity and were in respect of varying quantities of liquor. The offences covered a continuous period from 1970 to 1973 when this action was filed. The inmates of the premises who were the accused in such cases did not give

evidence in the present case and the defendant herself made an attempt to show that these persons were not residing with her, but was disbelieved by the trial judge.

Cases referred to

(1) *R. v. Wallwork, (1958) 42 Cr. App. R. 153.*
(2) *Abrahams v. Wilson, (1971)2 All E.R. 1114; (1971)2 W.L.R. 923; (1971)2 Q.B. 88.*
(3) *Schneiders & Sons Ltd. v. Abrahams, (1925)1 K.B. 301; 132 L.T. 721; 41 T.L.R. 24.*
(4) *Saris Appuhamy v. Ceylon Tea Plantations Co., Ltd., (1953) 55 N.L.R. 447.*
(5) *Abraham Singho v. Ariyadasa, (1968) 71 N.L.R. 138.*
(6) *Aslin Nona v. Don William, (1971) 75 N.L.R. 136.*
(7) *Asiya Umma v. Kachi Mohideen, (1959) 61 N.L.R. 330.*

APPEAL from a judgment of the Court of Appeal.

V. S. A. Pullenayagum with *Faiz Mustapha, Miss C. Abeysekera* and *Miss D. Wijesundera* for the substituted defendant-appellant.
H. L. de Silva, with *W. Siriwardena,* for the plaintiff-respondent.

Cur. adv. vult.

June 3, 1981.

WANASUNDERA, J.

This is an action for ejectment filed by the plaintiff-respondent against the defendant-appellant in respect of a monthly tenancy of premises No. 285/9, Ward Place, Colombo. The plaintiff came to court relying on the provisions of section 22 (1) (d) of the Rent Act, No. 7 of 1972, which allows the institution of an action for ejectment where "the tenant or any person residing or lodging with him or being his sub-tenant has, in the opinion of the court, been guilty of conduct which is a nuisance to adjoining occupiers or has been convicted of using the premises for an immoral or illegal purpose". Incidentally the requirement of a conviction under this limb (which existed in the Rent Act of 1948) was taken away by Act No. 12 of 1966, but has now been reintroduced by the present Act. This matter does not affect the issues which are before us in this case.

The plaintiff produced in evidence the case records P3, P4, P5, P6, P7, P8, P9, and P10 of the Magistrate's Court, Colombo, where the defendant's daughters Leelawathie and Wimalawathie, and her son-in-law Victor Perera have been convicted of possessing unlawfully manufactured liquor or possessing liquor in contravention of the law. In all these cases, the address of the accused persons is given as No. 285/9, Ward Place, which are the premises relating to this action. In all those cases the accused pleaded guilty to the charges and had been convicted and given a sentence. Except in one case (P6), where the venue is given as Maradana Road, Borella, which is also adjacent to the premises, in all the other cases the

scene of offence is described as "at Ward Place, Borella, within the jurisdiction of this court". The plaintiff has sought to supplement this material by showing that these offences had been committed on or about the premises. S.I. Navaratnam of the Borella Police has stated that these accused were detected "in the house, at various places close to the house, and in the near vicinity". He has also mentioned two other instances where the accused were seen going into the house with a plastic can and on another occasion the accused had rushed out of the house with a bottle in his hand.

Mr. Pullenayegum for the appellant objected to P6, referred to above and also to P10, because the record does not contain the charge sheet. The report to court in this case shows that it was a case of possession of about 25 bottles of pot arrack. The accused had pleaded guilty to the charge and was sentenced to pay a fine. The court had ordered the destruction of the productions.

The first ground urged by Mr. Pullenayegum is that there is no legally admisssible evidence to show that these offences were committed in or on the premises to satisfy the legal requirement of being convicted of using the premises. The records, he says, do not bear this out. Further, he relies on the provisions of section 91 of the Evidence Ordinance and has submitted that in law the plaintiff is confined to the records in the criminal cases and is precluded from altering, amending or supplementing that record with any other evidence.

There would be merit in Mr. Pullenayegum's submission if the criminal law prescribes that the exact spot where a crime is committed should be set out in the charge, on the basis that it constitutes an ingredient of the offence. Our law certainly contains provisions for the giving of particulars in regard to the time and place of the alleged offence. This requirement is for the purpose of giving the accused reasonable information regarding the charge against him and to indicate to court that the offence took place in a place or area within the territorial jurisdiction of the court. In the U.K. law, I find that there is no legal requirement that the location of the offence should be included in the particulars and accordingly an indictment is not rendered invalid by an incorrect statement about the venue. *R. v. Wallwork* (1); *Abrahams v. Wilson* (2). The latter case shows clearly that the certificate of conviction made no reference whatsover to the premises but nevertheless a police witness was allowed to testify to the finding of *cannabis*

resin in one of the rooms occupied by the tenant. In fact Widgery, L. J. after referring to the test as laid down by Scrutton, L.J. in *Schneiders & Sons Ltd. v. Abrahams* (3) the leading case on this matter, said—

> "Taking that as the test, when one looks at the certificate of conviction here, that certificate by itself is clearly not enough. It indicates a conviction for possession of cannabis, but in itself it contains no kind of reference to the premises sufficient to bring the matter within case 2. In my judgment a plaintiff, faced with such a situation, can and should lead evidence at the court of trial to connect the certificate of conviction with case 2; in other words, to prove such facts as are necessary—if they can be proved—which turn a conviction of itself unrelated to the premises into a conviction adequately related to the premises, to satisfy Scrutton, L. J.'s test."

The words of Edmund Davies, L. J. are to the same effect. He said:

> ". . . . . But I think that, in cases (such as the present) where the user of the premises is the focal point of the claim to possession, evidence should be called as to what actually transpired in the criminal trial, so that the civil judge may know with precision the basis of the conviction."

In the case of the convictions produced in the case before us, the accused had pleaded guilty to the charges and no question about the venue of this offence has been raised. The fact that the criminal law does not regard the exact spot where a crime has been committed as an ingredient of the offence or as an essential particular going to invalidate a conviction must be taken conjunctively with the fact that the case before us is a separate civil proceeding and it is incumbent on the plaintiff to establish those matters which constitute his cause of action. The use of the premises for an illegal purpose is, as it were, the focal point of this claim for possession. This he must do by legally admissible evidence, and I can see nothing in the provisions of section 91 of the Evidence Ordinance to prevent a plaintiff from leading oral evidence to establish the fact that a conviction was related to the premises in respect of which the defendant's ejectment is sought in the manner required by the law.

It seems to me that Mr. Pullenayegum's submission was an attempt to get round the formidable difficulties created by a series of decisions both of the U.K. and in our own country in regard to this matter. I may first refer to *Schneiders & Sons Ltd. v. Abrahams (supra).*

Schneiders' case concerned a somewhat corresponding provision in a U.K. Rent Act. Under section 4 of the U.K. Rent and Mortgage Interest Restrictions Act, 1923, no judgment for the recovery of possession of any dwelling house could be given unless the tenant "has been convicted of using the premises or allowing the premises to be used for immoral or illegal purpose". The tenant was convicted by a court of summary jurisdiction of receiving at the premises a roll of cloth valued at £ 5, well-knowing it to be stolen. It was argued that a conviction that would be relevant was a conviction which is recorded as a conviction for using the premises for immoral or illegal purposes. The offence of receiving stolen goods, it was submitted, is constituted independent of the place where the receiving took place.

The court rejected this narrow interpretation. The number of cases in law of the type contemplated by the appellant would be very small and even those few cases dealt with the "keeping" of premises for this or that immoral purpose and not with 'using'. Such an interpretation would have made the law almost totally unworkable. A strong bench consisting of Bankes, L.J., Scrutton, L. J. and Atkin, L. J. rejected the narrow interpretation contended for, and held that the relevant provisions did not require that the user of the premises should be an essential element but that it was sufficient if such use was an incidental circumstance of the offence; but it must be proved that the tenant had taken advantage of his tenancy and the opportunity it afforded for committing the offence. This case has been followed in *Abrahams v. Wilson (supra).*

On the local scene, *Schneiders' case* was followed by Rose, C.J. in *Saris Appuhamy v. Ceylon Tea Plantations Co. Ltd.* (4), and by Weeramantry, J., in *Abraham Singho v. Ariyadasa* (5), and in *Aslin Nona v. Don William (6).* As against this line of authorities, Sinnetamby, J. in *Asiya Umma v. Kachi Mohideen* (7) adopted the narrow interpretation which was considered and rejected in *Schneiders' case.* It appears that Sinnetamby, J., reached that conclusion apparently unaware of the earlier authorities.

The point now raised by Mr. Pullenayegum, it appears, is implicitly covered by those decisions. Mr. Pullenayegum implied that his present arguments founded on the provisions of section 91, Evidence Ordinance, renders the earlier authorities inapplicable. The provisions of section 91 are based on the well-known parol evidence rule of English law relating to the exclusiveness and conclusiveness of documentary evidence. These are therefore parallel provisions. The Judges in the U.K., I am sure, were aware of these corresponding provisions when they decided those cases. Mr. Pullenayegum's argument goes counter to all these decisions. He has presented the very same arguments rejected in those cases in a new garb. For these reasons, his first submission therefore fails.

For Mr. Pullenayegum's second argument he has sought to take advantage of certain dicta in these very same cases. Mr. Pullenayegum's contention is that the case against his client is of possession of unlawfully manufacture liquor and the fact that it took place on these premises was merely incidental and does not show a use as such of these premises. Relying on those cases he says that it is not enough that there is a convication of a crime committed on the premises, but it is necessary to show that the tenant had taken advantage of his tenancy and of the opportunity it afforded for committing the offence.

In *Saris Appuhamy's* case, the tenant was found in possession of three gunny bags of manufactured tea dust and eight gunny bags of tea sweepings—offences under the Protection of Produce Ordinance. The premises were a boutique. Rose, C. J., refused to interfere with the finding of the trial Judge that the premises had been made use of for storing goods reasonably suspected of being stolen.

In *Abraham Singho v. Ariyadasa (supra)*, a single conviction for the sale of an excisable article was proved. Weeramantry, J. said:

> "Consequently, I have little difficulty in holding in this case that the conviction for the sale of arrack is a conviction of using the premises for an illegal purpose inasmuch as advantage has been taken of the tenancy of the premises and of the opportunity they afforded for committing the offence. Such a case cannot be likened to a case of assault where the premises merely afforded the venue or the scene for commission of the

offence. An illegal sale of arrack requires a measure of cover, and there is no doubt that the building has in this sense been taken advantage of. I may add that in this view of the matter it would make no difference to the decision in this case whether the law applicable be the original statute or the amending Act No. 12 of 1966, for the premises have been used in the sense of being taken advantage of and are not merely the fortuitous scene of commission of a crime."

Aslin Nona v. Don William's case (supra) involved a conviction for possession of unlawfully manufactured arrack. Weeramantry, J. said that the landlord has not been ready with the requisite proof of his allegation and the court was left with the evidence of a conviction which was not too clear. He said that there was no evidence of the tenant taking advantage of the premises for committing the offence. He added—

". . . . . Unlike in the case of an illicit sale where the cover of the building is made use of or taken advantage of for the purpose of effecting the sale, the mere offence of possession does not appear to involve taking advantage of the building as such."

If Weeramantry, J. by this statement meant that one act of possession cannot in any circumstances constitute a use of the premises within the meaning of the section, then I think he has declared the law a little too narrowly as we can gather from the U.K. decisions.

In *Abraham v. Wilson (supra),* the tenant had been convicted of possessing 66 grams of cannabis resin. No reference was made to the premises in the certificate of conviction. There was the evidence of a police witness that he had found this drug under a cupboard in one of the rooms. The tenant, while not denying that this was found in the premises, vehemently denied knowledge of its existence. The tenant was convicted in the criminal proceedings; but in the proceedings under the Rent Act, the court exercised its discretion against issuing an order for possession by the landlord. The U. K. law contains an overriding provision that no order for possession should be made by the court even when the required circumstances are established, unless the court considers it reasonable to make the order. Widgery, L. J. observed—

" . . . . . .Some kind of attempt was made by the landlady to show that the cannabis in question has been found under a cupboard in the demised premises. I am prepared, for present purposes, to assume that she proved that, although it is not altogether clear to me that she did. One would then have to consider whether a conviction for possession of cannabis, which was shown to have been cannabis located in such a position, came within case 2. Applying Scrutton, L. J.'s test, the position in regard to the finding of dangerous drugs on the demised premises I think is simply this. If the drugs are on the demised premises merely because the tenant is there and has them in his or her immediate custody, such as a pocket or a handbag, then I would say without hesitation that that does not involve a 'using' of the premises in connection with the offence. On the other hand, if the premises are employed as a storage place or hiding place for dangerous drugs, a conviction for possession of such drugs, when the conviction is illuminated by further evidence to show the manner in which the drugs themselves were located, would I think be sufficient to satisfy the section and come within case 2."

Although Widgery, L.J. ultimately declined to interfere with the discretion of the trial Judge, his own view on the facts was that they were adequate to establish a user of the premises for an illegal purpose. He said—

"Accordingly, I think on the evidence here, such as it was, the learned Judge might have been entitled to take a contrary view on the strict matter of law and to have concluded that there was here a conviction of 'using the dwelling-house' for an illegal purpose. . . . . "

Edmund Davies, L.J. appears to have favoured even a broader application of these principles. He said—

"Applying that test to the present case, I for my part would put it in this way. In proper and clear circumstances—which must be established, of course, by the landlord—a conviction of using premises for an illegal purpose, within the meaning of case 2, can be established by proof that in the demised premises a quantity of cannabis resin was found. One must, however, look at the circumstances very carefully before an isolated finding on a single occasion is held to constitute proof of such user."

The situations mentioned in this case are not exhaustive of the instances when the required inference can be drawn.

Turning now to the facts of the case before us, there is evidence that the inmates of these premises have been prosecuted no less than in 20 of these cases. The offences were committed in the premises and in the close vicinity. The quantities possessed range from 4 or 5 drams to 25 bottles in P10. The offences cover a continuous period from 1970 to 1973 till the present action was filed. The inmates of the premises, who were the accused in these cases, did not choose to give evidence in the present case. The defendant made an attempt, in the face of overwhelming evidence, to show that these persons were not residing with her; but she was rightly disbelieved by the trial Judge. She however admitted that these persons were selling unlawfully manufactured arrack in the garden which was common to a number of tenements, including this. She also said that she herself visited her house only once or twice a week and did not know what took place there when she was away.

Upon this evidence, bearing always in mind that the burden lay with the plaintiff, there was ample material for an inference to be drawn as to whether or not the convictions were associated with the premises in such a way as to constitute a user of the premises for an illegal purpose. This Court will not interfere with the discretion of a lower court if there is sufficient material to support that decision, although it could be said that another tribunal may have come to a different conclusion. We have on this matter the concurrent findings of the trial Judge and of the Court of Appeal. I am unable to say that their decision is wrong or unreasonable. The appeal is therefore dismissed with costs.

SAMARAKOON, C.J.—I agree.

ISMAIL, J.—I agree.

Appeal dismissed.