

HETTIARACHCHI
v.
HETTIARACHCHI

SUPREME COURT.

G. P. S. DE SILVA, C.J.

KULATUNGA, J. AND

WADUGODAPITIYA, J.

S.C. APPEAL 58/94.

C.A. NO. 446/92 (F).

D.C. MT. LAVINIA NO. 2618/RE.

SEPTEMBER 21, OCTOBER 21 AND NOVEMBER 25, 1994.

Landlord and tenant – Residential premises occupied by owner and let out after 01 January 1980 – Proof of ownership – Rent Act, section 2(4)(c).

Where exemption from the Rent Act is claimed on the basis of section 2(4)(c) of the Rent Act the onus is on the plaintiff to prove,

- (i) that the premises were residential premises,
- (ii) that the plaintiff was in occupation of the premises on 1st January, 1980,
- (iii) that the plaintiff was in occupation of the premises on 01 January 1980 in the capacity of owner.

Proof of ownership need not necessarily be only by due proof of title deed. Oral testimony which is not challenged and extracts from Assessment Registers are sufficient. The section is concerned with the nature of the occupation and the question of title is irrelevant.

APPEAL from judgment of Court of Appeal.

P. A. D. Samarasekera P.C. with Jayantha de Almeida Gunaratne for the plaintiff-appellant.

Faiz Musthapha P.C. with Sanjeewa Jayawardene for defendant-respondent.

Cur. adv. vult.

December 15, 1994.

G. P. S. DE SILVA, C.J.

The plaintiff instituted these proceedings *inter alia* for the ejection of this tenant, the defendant, from premises No. 78, Devala Road, Nugegoda. The case for the plaintiff was that the Rent Act (as

amended) did not apply to the premises by reason of the provisions of section 2(4)(c). Section 2(4)(c) reads thus:

"So long as this Act is in operation in any area, the provisions of this Act shall apply to all premises in that area, other than –

(a)

(b)

(c) residential premises occupied by the owner on January 1, 1980, and let on or after that date."

It is thus seen that the onus was on the plaintiff to establish (i) that the premises were residential premises; (ii) that he (the plaintiff) was in occupation of the premises on 1st January 1980 and that the premises were let on or after 1st January 1980; (iii) that the plaintiff was in occupation of the premises on 1st January 1980 in the capacity of owner. At the trial (i) above was recorded as an admission. It was also not disputed that the premises were let to the defendant after 1st January 1980. The clear finding of the District Judge was that the plaintiff was in occupation of the premises on 1st January 1980; this finding was amply supported by the oral and documentary evidence and was not seriously contested in appeal. The District Judge, however, dismissed the plaintiff's action on the ground that he had failed to prove that his occupation of the premises as on 1st January 1980 was in his capacity as owner. The plaintiff's appeal to the Court of Appeal was unsuccessful; the Court of Appeal affirmed the finding of the District Judge that there was no proof that the plaintiff was the owner of the premises as on 1st January 1980. Hence the plaintiff's appeal to this Court.

At the trial, the plaintiff sought to prove ownership of the premises by producing the deed of transfer No. 1568 dated 20.6.64 and attested by W. Rajasingham, Notary Public (PB). The deed P8 was admitted subject to proof. It is common ground that the plaintiff failed to prove the due execution of the deed as required by the provisions of the Evidence Ordinance (Sections 68 and 69).

Mr. Musthapha for the defendant-respondent strenuously contended (1) that an essential basis of the plaintiff's claim that the Rent Act did not apply to the premises in suit was that the plaintiff

was the owner of the premises; (2) that the deed P8 upon which he purported to base his claim of ownership remained unproved.

In considering the submissions of Mr. Musthapha it seems to me that it is intensely relevant to note that this is a tenancy action. It is not a *rei vindicatio* action which is an action founded on ownership. There was the unchallenged oral evidence of the plaintiff that he was the owner of the premises as on 1st January 1980. It was not even suggested that the plaintiff was not the owner of the premises or that someone else was the owner. In short, there was no suggestion that the plaintiff was making a false claim as owner. There was nothing to contradict the plaintiff's assertion in his evidence that he was the owner of the premises on the relevant date. Besides, the plaintiff marked in evidence entries in the Assessment Registers (P19 and P20) where his name appears as the owner. This is an item of evidence which tends to support the plaintiff's unchallenged and uncontradicted oral evidence that he was the owner of the premises on the relevant date.

Turning now to the wording in section 2(4)(c) of the Rent Act, it seems to me that the distinction drawn is between premises occupied by the owner as on 1st January 1980, and premises which had been let to a tenant on the said date, as submitted by Mr. Samarasekera for the plaintiff-appellant. Mr. Samarasekera rightly stressed that the section is concerned with the nature of the occupation and the question of title is irrelevant. The present action is based on a contract of tenancy and the plaintiff is seeking to eject the defendant whose occupation of the premises is admittedly as a tenant.

On a consideration of the matters set out above, I hold that the evidence on record is sufficient to establish the fact that the plaintiff was the owner of the premises for the purpose of section 2(4)(c) of the Rent Act, notwithstanding the failure to prove the deed or transfer P8. I accordingly allow the appeal, set aside the judgment of the District Court and of the Court of Appeal and direct that decree be entered for the ejectment of the defendant as prayed for in the plaint. I further direct writ of ejectment not to issue till **31st December 1995**. The plaintiff will be entitled to take out writ of ejectment and to be

placed in possession of the premises in suit after 31st December 1995. The defendant must pay the plaintiff a sum of Rs. 750/- as costs of appeal.

KULATUNGA, J. – I agree.

WADUGODAPITIYA, J. – I agree.

Appeal allowed.
