MAHINDA
V.
PERIAPPERUMA AND 2 OTHERS

COURT OF APPEAL
WEERASEKERA, J.
WIGNESWARAN, J.
C.A. 461/88 (F)
D. C. MOUNT LAVINIA 505/RE
FEBRUARY 22, 1996.

Rent and Ejectment - Rent Act 5 of 1972 - S. 37 (2) b and k - Ejectment - Notice to Quit - Attornment - Agent of Landlord.

Plaintiff-respondents instituted proceedings for the ejecment of the Defendant Appellant on the ground of arrears of Rent. One 'S' was the landlord till 1974, and in 1974 he gifted the House to the 2nd and 3rd plaintiff-respondents, and from 1974 though he had collected the Rent he had handed over same to the owners. In his application to the Rent Board by the defendant-appellant 'S' was referred to as the landlord, but had included the names of all three Plaintiff-Respondents as necessary parties, and subsequently accepted the position that the Plaintiff-Respondents were his landlords. The District Court held with the plaintiff.

Held:

(i) The evidence showed that 'S' was only an Agent for the owners after 1974. The fact that S collected the Rent may have caused confusion in the mind of the defendant -appellant. When his lawyer stated to the Board that he was accepting the position that the plaintiff respondents were the landlords and he was only acknowledging a pre-existing state of matters of which the defendant -appellant was vague and undecided. He did not for the first time for any specific reason attorn Tenancy to the plaintiff respondents, as such the existing tenancy was confirmed and no New Tenaney was created. S.37 (2) b and (k) of the Rent Act recognises the fact that the person to whom rent is payable need not be the landlord.

(2) The Notice to quit was in order, since the proper land-lords had sent same. The defendant-appellant must be deemed to have been the Tenant of the plaintiff-respondents at the time of the Notice to quit.

(3) The giving of the proper period of Notice in terms of the law is what is relevant with regad to a Notice to quit, other matters can be elucidated by Evidence - as done in this case.

Cases referred to:

Seelawathie v. Ediriweera - 1989 2 SLR 17

A. K. Premadasa P.C., with *C. E. de Silva* for defendant-appellant.
P. A. D. Samarasekera P.C., with *Kirthi Sri Gunawardane* for plaintiff-respondents.

AN APPEAL from the Judgment of the District Court of Mt. Lavinia.

Cur. adv. vult.

30 April,1996.
WIGNESWARAN, J.

The plaintiff-respondents instiuted this action inter alia for ejectment of the defendant-appellant from premises No. 346. Pita Kotte, Kotte on the ground of arrears of rent from March 1977 within the meaning of Section 22(1)(a) of the Rent Act.

The learned District Judge. Mt. Lavinia after trial held in favour of the plaintiffs by his judgment dated 9.11.83.

The learned President's Counsel appearing for the defendant-appellant has taken up before us the following matters:-

1. The notice to quit is dated 12.8.77.
2. At the time of the notice to quit there was no tenancy between the plaintiffs and the defendant.
3. The defendant-appellant attorned to the plaintiff-respondents only from 11.10.79 at the Rent Board proceedings.
4. Notice to quit refers to defendant-appellant in occupation of the premises in suit wrongfully and unlawfully but not as a tenant.
5. Notice to quit was not given for 3 months as contemplated in Section 22(3) of the Rent Act.

The learned Counsel has therefore argued that the order of the learned District Judge was in error and has prayed for the dismissal of the plaintiff's action after setting aside the order dated 9.11.83.

මා කුලිය ගත්තා. 1974 වන තුරු මා කුලිය ගත්තා."

There is no doubt in this case that the Defendant-Appellant was the tenant although he carried on business with two other partners. At page 37 of the brief it is stated by the Defendant-Appellant as follows:-

"ඉන් පසු මා එල්. ඩී. සයිමන්ට කිව්වා තනියෙන් කරගෙන යන්න බැහැ කියා. ඉන් පසු ඔහු හවුල් ව්‍යාපාරයට බැඳුනා මා සමඟ. ඔහු සමඟ සී. පේමානන්ද සහ මමත් එය කරගෙන ගියා. එසේ කරගෙන යන අවස්ථාවේදී කුලිය ගෙවිවේ මමයි මමයි සාප්පුව කුලියට ගත්තේ. ඉන් පසු හවුල් ව්‍යාපාරයක් ඇති වුනා. ඉන් පසු මා කුලිය ගෙවිවේ මේ එල්. ඩී. සයිමන් යන අයට. ව්‍යාපාරයක් වශයෙන් එය ලියාපදිංචි කළේ 1971 වර්ෂයේදී."

Thus the dispute is with regard to who the landlord/landlords were. Defendant-Appellant since he paid rent to Simon claimed that Simon was the landlord. Simon has himself given evidence and said that until 1974 he took the rent for the 1st plaintiff-respondent and himself. In 1974 when his daughter the 2nd Plaintiff-Respondent married 3rd Plaintiff-Respondent the pemises in suit was gifted to the 2nd and 3rd Plaintiff-Respondents and therefore though he collected the rent from the Defendant-Appellant, he handed over the rents to the 2nd and 3rd Plaintiff-Respondents. He disclaimed landlordship after the gift of the property took place. At page 28 of the appeal brief Simon's evidence runs thus:-

"1977 දුවටත්, බැනටත් කුලී දුන්නේ ඔවුනට අයිති නිසා. ඔවුනට අයිති වූ පසු මා කුලිය අරන් ඔවුන්ට ගිහින් දුන්නා. 1974 දී එසේ කරන්න කලින් මා කුලිය ගත්තා. 1974 වන තුරු මා කුලිය ගත්තා."

At pages 29 and 30 of the brief witness Premananda, the other partner, gave evidence and said thus:-

"ප්‍ර: මේ කඩය සම්බන්ධයෙන් කුලිය ගෙවිවේ කාටද?

උ: කුලිය ගෙවිවේ බී. ලියනගේ ට සහ එයාගේ සහෝදරියටයි.

සයිමන් කුලිය ගිහින් දෙනවා. ඒ ගිහින් දෙන මුදල සයිමන් ගන්නේ කඩයේ මුදල් වලින්. අපේ ගෙවල් කුලිය වෙන් කළ විට සයිමන් ගිහින් දෙනවා. ඒ සම්බන්ධව පොත්පත්වල සඳහන් කළා. මහින්ද එය කළේ. ඒ පොත්පත් ඔහු ළඟ තිබෙනවා. අපට ඒ පොත්පත් ගන්න නොහැකි වුනා."

The evidence of these witnesses therefore seems to confirm that Simon was only an agent for his daughter and son-in-law after 1974. Though the Defendant-Appellant referred to Simon as his landlord, in his application dated 4.9.78 to the Rent Board he was himself not sure whether Simon was in fact his landlord. That was probably why he included the names of all three Plaintiff-Respondents in P3 in item 3 of the application, as necessary parties.

At the inquiry, having found that Simon was not the owner he abandoned his earlier position and acknowledged that the plaintiff-respondents who were shown as necessary parties in his application were the actual landlords. The relevant portion of P6 at page 66 of the brief reads as follows:-

> " වී. එස්. ගුණවර්ධන නීතිඥ මහතා ඉල්ලුම්කරු වෙනුවෙන් පෙනී සිට මණ්ඩලයට පවසා සිටින්නේ මෙම ඉල්ලුම් පතට සම්බන්ධ වෙනත් පාර්ශවකරුවන් වන
>
> 1. නිලකා ගර්ටි ලියනගේ
> 2. දොන් කරුණාරත්න ඇපාසිංහ
> 3. වී. ලීලාවතී පෙරියප්පෙරුම යන සහයට ගේ හිමියන් වශයෙන් පිළිගන්නා බවයි"

There was no contest with regard to the question of who was the landlord at the Rent Board. The Respondent-Appellant seems to have known that the Plaintiff-Respondents had interests over the property occupied by him and what their interests were, as there was otherwise no necessity to mention them as parties necessary. The fact that Simon collected the rent may have caused confusion in the mind of the Respondent-Appellant. When his lawyer stated to the Board that he was accepting the position that the plaintiff-respondents were the landlords he was only acknowledging a pre-existing state of affairs of which the Defendant-Appellant was vague and undecided. He did not for the first time for any specific reason attorn tenancy to the Plaintiff-Respondents. As such the existing tenancy was confirmed and no new tenancy was created. The wording is quite clear to come to the conclusion that no attornment for the first time took place on 11.10.79. The Counsel simply acknowledged the fact of the Defendant-Respondents being the landlords. The learned District Judge understood this

position clearly and correctly, when he gave his judgment dated 9.11.83. At page 52 of the brief he has said as follows:-

> "හවුල් ව්‍යාපාරය කඩා වැටුනාට පසු ටිට පෙනී යන්නේ 1977 මාර්තු මාසයේ සිට ගෙවා නැත කියා. විත්තිකරු ඔවුන් 11.10.79 සිට පැමිණිලිකාරියන් ගෙවල් හිමියන් හැටියට පිළිගෙන තිබෙනවා. එසේ පිළිගත් එක මට තේරුම් යන්නේ ටිට ප්‍රථමයෙනත් ඔහු තමයි ගෙවල් හිමියා බව. එය පිළිගත හැක. වෙන කරුණක් විධියට සිටීම අමාරුයි මේ සාක්ෂි උඩ. මේ කරුණු උඩ මට පෙනී යනවා පැමිණිලිකරුවන් අතරත්, විත්තිකරු අතරත්, තිබීලා තිබෙන්නේ කුළී නිවැසි ගාවයකි.

It must be noted that in Section 37(2) (b) and (k) of the Rent Act there is a recognition of the fact that the person to whom rent is payable need not be the landlord. In *Seelawathie v. Ediriweera* "it was said ". .. the statement under Section 37 of the Rent Act referred to the brother-in-law as the person entitled to receive rent: as the Court of Appeal observes this "does not make (him) the landlord . . . only the agent of the landlord to collect the rents due to the landlord:. . ."

Thus the notice to quit being sent on 12.8.77 was quite in order since the proper landlords had sent the notice to the tenant. The tenant as stated above did not attorn to the Plaintiff-Respondens for the first time on 11.10.79 but instead acknowledged the pre-existing tenancy in an official forum. Thus the Defendant-Appellant must be deemed to have been the tenant of the Plaintiff-Respondents at the time of the notice to quit.

D4 states ". . . I cannot understand how your client is taking up the position to say that he is the tenant of these premises". Its meaning must be gathered from the earlier part of that sentence. What it means is that the Defendant-Appellant had no right to consider L. D. Simon as his landlord and therefore could not have been deemed to be a tenant of L. D. Simon.

Further in the notice to quit, D1 the wrongful and unlawful nature of the occupation has been referred to in the light of the business called "Sweda Furnishers" ceasing to function. The fact of the tenant, Simon and Premananda continuing in business together and thereafter ceasing to do business must be kept in mind in understanding the contents of D1.

The partners Simon and Premananda have given evidence and confirmed the state of affairs that existed. Therefore the notice to quit cannot be looked upon as an illegal document. In any event the giving of the proper period of notice in terms of the law is what is relevant with regard to a notice to quit. Other matters can be elucidated by evidence as done in this case. The notice was given on 12.8.77 to quit at the end of 30.11.77. Three clear calendar months' notice had been given in terms of the law.

I therefore find that there is no merit in the submissions raised on behalf of the defendant-appellant and accordingly dismiss the appeal with costs fixed at Rs. 2,625/-.

WEERASEKERA, J. - I agree.

Appeal dismissed.