

**MANSOOR**

v.

**UMMA**

COURT OF APPEAL.

H. A. G. DE SILVA, J. AND G. P. S. DE SILVA, J.

C. A. (S. C.) 8/78-D. C. GALLE-L/8898.

JANUARY 10, 1984.

*Rent Act, No. 7 of 1972—Action for ejection of tenant—Denial of contract of tenancy by tenant—Whether notice to quit by landlord is necessary under the common law.*

The plaintiff-respondent filed action against the defendant to have him ejected from the premises in suit on two grounds, without serving on him a notice to quit. The defendant disclaimed tenancy.

Held—

(1) Once a tenant denies the contract of tenancy, the question of serving on him a notice to quit does not arise. The defendant is not entitled to a valid notice to quit, since he has himself by his denial repudiated the contract of tenancy and thereby terminated it.

(2) Conduct which shows denial of title antecedent to the plaint is not necessary in order to relieve the plaintiff of the requirement of giving notice. Mere denial of tenancy is sufficient.

**Cases referred to**

- (1) *Peiris v. Fernando*, (1976) 78 N. L. R. 206.
- (2) *Muttu Natchia et al v. Patuma Natchia et al*, (1896) 1 N.L.R. 21.
- (3) *Edirisinghe v. Patel and others*, (1979) 79(1) N.L.R. 217, 228.
- (4) *Sundra Ammal v. Jusey Appu*, (1935) 36 N.L.R. 400.
- (5) *Pedrick v. Mendis*, (1961) 62 N.L.R. 471.
- (6) *Hassan v. Nagaria*, (1973) 75 N.L.R. 335.

APPEAL from an order of the District Court of Galle.

A. Mampitiya for 1st defendant-appellant.

N. Devendra with Liyanage for plaintiff-respondent.

February 17, 1984.

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

The plaintiff brought this action for the ejection of the 1st defendant, who was her tenant, from the premises in suit, on two grounds :-

- (1) sub-letting to the 2nd defendant (section 10 (5) of the Rent Act, No. 7 of 1972) ;
- (2) deterioration of the condition of the premises owing to acts committed by the 1st defendant (section 22(1)(d) of the Rent Act. No. 7 of 1972).

After trial, the District Judge held against the plaintiff on the issue of sub-letting of the premises while he found in favour of the plaintiff on the ground of ejection based on section 22(1)(d) of the Rent Act. The District Judge made Order, *inter alia*, for the ejection of the 1st defendant and the appeal is against this judgment and decree. I may add that the 2nd defendant died while the action was pending.

Mr. Mampitiya, Counsel for the 1st defendant-appellant, did not challenge the findings of the Trial Judge on the issue based on section 22(1)(d) of the Rent Act, nor did he canvass any of the other findings on the facts. Counsel's only submission was that the plaintiff cannot maintain this action inasmuch as the contract of tenancy was not terminated. It is not in dispute that the plaintiff had failed to give notice to the 1st defendant, of the termination of the monthly tenancy. On the other hand, Counsel for the plaintiff-respondent relied on the following issue raised on behalf of the plaintiff :-

"Since the 1st defendant denies the contract of tenancy with the plaintiff, as alleged in the plaint, is the lawful termination of the contract necessary?"

The 1st defendant in his answer, while denying that there was a contract of tenancy with the plaintiff, specifically pleaded that the contract was with the plaintiff's brother, one A. R. A. Majeed. In his evidence, too, the 1st defendant took up the same position. At the hearing before us, Mr. Mampitiya conceded that the 1st defendant

has disclaimed tenancy. Nevertheless, Counsel strenuously contended that no cause of action arises to sue the tenant in ejectment unless there is, at least, an averment in the plaint that the contract of tenancy has been duly terminated. Mr. Mampitiya further submitted (and this was his main submission) that a mere denial of tenancy is not sufficient to relieve the landlord of his obligation in law to terminate the contract of tenancy but there must be, to use Counsel's own words, "a denial of title antecedent to the plaint"

The first case cited by Mr. Mampitiya in support of his submissions is *Pieris v. Fernando* (1). This case is certainly an authority for the proposition that an action for ejectment of a tenant based on section 22(1)(d) of the Rent Act, cannot succeed unless the landlord has given to the tenant, a valid notice terminating the contract of tenancy. But what is significant for the purposes of the present appeal is that the question whether a tenant who denies tenancy is entitled to a notice to quit before action in ejectment is instituted, did not arise at all for consideration in *Pieris v. Fernando* (*supra*).

The case on which Mr. Mampitiya relied strongly was *Muttu Natchia et al v. Patuma Natchia et al*, (2). In a very short judgment, Browne, J. stated thus :

"The plaint in this case sufficiently averred that the defendant, after entering and holding as tenant of the plaintiff, had disclaimed to hold of him and put him at defiance. It was unnecessary therefore that the plaintiff, as he did, should have averred or have sought to prove any notice to quit given by him to defendant, and defendant, was not entitled to have the action dismissed because no valid notice was given.

The decree of dismissal must therefore be set aside and the action remitted for trial . . . . ."

It will be seen that nowhere in this judgment is there a reference to "a denial of title" nor does the learned Judge speak of the conduct of the defendant prior to the institution of the action. In my view, the judgment proceeds on the basis of a denial of tenancy by the defendant and does not postulate the requirement of a denial of title antecedent to the filing of action. It is true that in the summary of the facts prepared by the editor of the New Law Reports, there is a reference to the defendants questioning the plaintiffs' title and the

defendants setting up title in themselves but it must be noted that the judgment itself does not proceed on that basis. What is more, none of the subsequent cases refer to such a requirement.

The reason why a notice to quit is not necessary when a tenant denies tenancy, was succinctly stated by Sirimanne, J. in *Edirisinghe v. Patel and others* (3) :

"Learned Counsel for the respondent cited some cases where it has been held that a tenant who denies the tenancy is not entitled to a notice to quit. The reason why such notice is not necessary and why a defendant who denies a tenancy cannot take such a plea is because by his denial he repudiates the contract of tenancy and thus terminates it. It is, therefore, not open to the defendant who has himself terminated the contract, to say that the plaintiff has not terminated it by a valid notice. *A contract of tenancy can be terminated not only by a valid notice but also by a repudiation of that contract . . . .*" (The emphasis is mine.)

Mr. Mampitiya referred us to the case of *Sundra Ammal v. Jusey Appu* (4). In this case, the question was not argued by Counsel in view of the decision in *Muttu Natchia v. Patuma Natchia* (*supra*). It merely followed the 1 N.L.R. case.

The next case cited on behalf of the appellant was *Pedrick v. Mendis* (5). K. D. de Silva, J. citing *Muttu Natchia v. Patuma Natchia* (*supra*) took the view that :

"it is the common law which requires that a monthly tenancy should be determined by a month's notice. However, the common law also provides *that a tenant who disclaims tenancy is not entitled to a valid notice to quit.*" (The emphasis is mine.)

Finally, Mr. Mampitiya cited *Hassan v. Nagaria* (6), wherein Samarwickrame, J. expressed himself thus :

"In this case, the defendant-appellant has denied tenancy under the plaintiff-respondent and the latter had to prove tenancy in the action. In view of the authorities that have been cited to me, I hold that no notice to quit *need have been averred or proved* in the circumstances of this case."

Thus it is seen that the submission of Mr. Mampititya, that the plaintiff, in the instant case, should, at least, have averred in his plaint that notice to quit was given to the defendant, is not entitled to succeed.

On a consideration of the decisions cited before us, it seems to me that there is no authority which supports the proposition that in order to dispense with a notice to quit, a mere denial of tenancy is not sufficient but that there must be the further requirement of conduct which shows a denial of title. The trend of the decisions is that once the defendant in a tenancy action denies the tenancy, the question of terminating the contract of tenancy by a notice, does not arise. I am, therefore, of the view that the appeal fails and must be dismissed with costs.

Before I conclude, I wish to point out that the question of dispensing with the requirements of a *statutory* notice of termination of tenancy (as distinct from the notice required under the common law), did not arise for consideration on this appeal.

H. A. G. DE SILVA, J.—I agree.

*Appeal dismissed.*

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