

**MIRIAM LAWRENCE**

v.

**ARNOLDA**

**SUPREME COURT**

**SAMARAWICKREMA J, ISMAIL J. AND WANASUNDERA J.**

**S. C. APPEAL 39/80**

**C. A. APPLICATION NO. 45/80**

**D. C. COLOMBO NO. 563 RE**

**OCTOBER 30 & 31, 1980.**

*LANDLORD AND TENANT – Action for ejectment under S. 22(1A) of Rent Act No.7 of 1972 – S. 22(1)(bb) of Rent ACT – Essentiality of pleading that landlord is a owner of a single house.*

Landlord and Tenant— Action for ejectment under S. 22(1A) of Rent Act No. 7 of 1972. S. 22(1)(bb) of Rent Act – Essentiality of pleading that landlord is a owner of a single house.

(1) the landlord should be the owner of only a single house

(2) the landlord should have caused notice of the action or proceeding to be served on the Commissioner of National Housing.

An action under S. 22(1) (bb) can only be maintained if the premises had been let to the tenant prior to the coming into operation of the Rent Act i.e. 1.3.1972 and it was the duty of the trial judge to determine this. It was also necessary for the Court to have considered whether the defendant became a statutory tenant after the death of his father the original tenant or whether he was a tenant on a fresh tenancy. Issues on these two matters should be framed by the Court as the determination of the case depended on them.

**Case referred to:**

(1) *Daryanani v The Eastern Silk Emporium* 64 NLR 529.

Appeal from judgment of the Court of Appeal.

*A. K. Premadasa with T. B. Dillimuni and G. H. A. Suraweera for the plaintiff appellant.*

*Walter Jayawardene Q.C. with P. Somatilakan and M. Mahendran for the Defendant Respondent.*

*Cur.adv.vult.*

February 6, 1981

ISMAIL, J.

The Plaintiff is the landlord of premises No. 129, Pickering Road, Colombo 13 and the defendant is in occupation of the premises as the tenant of the plaintiff on a monthly rental of Rs. 100/-. No question of arrears of rent arises for determination in this case. The plaintiff pleads that on 27.2.78 she had through her Attorney-at-law, given notice to the defendant to quit and deliver peaceful vacant possession of the premises in question on 31.8.78 and the defendant continues to be in unlawful occupation of these premises. The plaintiff bases this action on the provisions of Section 22(1)(bb) of Rent Act No. 7 of 1972 as amended by Law No. 10 Of 1977 and states that the premises in suit are reasonably required for her use and occupation as a residence for herself and members of her family.

The defendant in his answer while denying the several averments in the plaint has taken up the position that the defendant's father became the tenant of the premises in suit in 1914 and continued to be the tenant of the premises until his death on 31st August 1972 and that the defendant became the tenant from 14th September 1972 and therefore Law No. 10 of 1977 would have no application in view of the facts of this case. The defendant further pleaded that the plaintiff and her husband have been provided with residential quarters by the Government and therefore there was no present need for the plaintiff to come into occupation of the premises in suit and, takes up the position that the plaint does not disclose a valid cause of action for ejectment of the defendant.

At the outset of the trial, Counsel appearing for the defendant had taken up the position that this plaint could not be entertained because the plaintiff had not specifically pleaded that he is the owner of a single house, since it was the specific requirement of the law under Law No. 10 of 1977. He referred to section 22(1A) and stated that unless there was this specific pleading it would be a positive bar to the plaintiff to invoke the provisions of section 22 of Law No. 10 of 1977. He had addressed the Court at length — *vide* pages 175 to 177 and the Court in its order had taken up the position that the requirement under the Rent (Amendment) Law No. 10 of 1977 that the plaintiff is not the owner of more than one house is a matter of evidence and is not a matter which need have been pleaded. Section 22(1A) of Rent (Amendment) Law No. 10 of 1977 reads:

“(1A) Notwithstanding anything in sub-section (1), the Landlord of any premises referred to in paragraph (bb) of that sub-section shall not be entitled to institute any action or proceedings for the ejection of the tenant of such premises on the ground that such premises are required for occupation as a residence for himself or any member of his family, if such landlord is the owner of more than one residential premises, and unless such landlord has caused notice of such action or proceedings to be served on the Commissioner of National Housing.”

It will be noted that under sub-section (1A) there had to be two essential pre-requisites before institution of any action or proceedings for ejection of a tenant. There are, firstly, that the said landlord will not be entitled to institute any action or proceedings for ejection of a tenant if he is the owner of more than one residential premises and secondly, the said landlord had caused notice of such action or proceedings to be served on the Commissioner of National Housing. The plaintiff had complied with the latter of these requisites for he states in paragraph (7) of the plaint that he has sent a copy of the notice to quit to the Commissioner of National Housing. But there is no averment at all in the plaint that he is not the owner of more than one residential premises or that he is the owner of only one residential premises.

It will be seen from the proceedings that the plaintiff's husband who gave evidence on behalf of the plaintiff had been cross-examined at great length for several days and in the course of this cross-examination he had been repeatedly examined and his attention had been focussed to the question whether the plaintiff was the owner of a single residential house or whether she owns more than one residential house. When one reads the entirety of the plaintiff's evidence an analysis of the evidence indicates that he is unable to state with authority that the plaintiff is not the owner of more than one residential premises. It appears to me that this question of owning only one residential premises is fundamental to the invoking of the provisions of Law No. 10 of 1977 and is a matter that should have been pleaded in the plaint in order to enable the plaintiff to invoke the provisions of this Act. Though the attention of the Trial Judge had been drawn to this at the outset of the trial, the learned Trial Judge had not chosen either to reject the plaint or return the plaint for amendment but had contended himself with the bare assertion that this was only a matter of evidence.

To invoke the provisions of Law No. 10 of 1977, it is an essential requisite that the person should be possessed of only one

residential premises; and it appears to me that if this is clearly pleaded only, would the Court have jurisdiction to entertain and proceed with the case instituted under the provisions of this Law. Therefore it appears to me that objection cannot be dismissed by purely contending that it is only a matter of evidence when *ex facie* it is a fundamental requirement under the law.

Since a large volume of evidence had been admitted on this aspect of the matter and parties had placed in the forefront of this case the importance of a decision on this point, namely whether the plaintiff is the owner of only one residential premises, I am of the view that it was necessary, even if the parties failed to do so, for Court to have in the course of the proceedings to have raised issues to bring into focus the existence or non-existence of the requirements necessary for the maintenance of this action in terms of Section 22(1A). There could be no doubt that the question whether the plaintiff was the owner of only one residential premises has been in the forefront of this case right throughout the proceedings. Attention of the plaintiff's husband was also drawn to the other question namely, as to when the plaintiff became the landlord of the premises, in suit. Issue No. 7 reads :—

“Did the defendant become the tenant of the plaintiff as from 1. 9. 72?”

Issue No. 10 has been framed :

“If any one or more of the issues are answered in favour of the defendant, could the plaintiff have maintained this action ?”

The learned District Judge had answered issue (7) in the affirmative, that is, in favour of the defendant but in answering issue (10) he had stated “does not arise”. Section 22(1) (bb) of Act No. 7 of 1972 clearly indicates that an action under this law can only be maintained if the premises had been let to the tenant prior to the date of commencement of the Act. The Act had come into operation on 1. 3. 1972. Therefore, it was the duty of the Trial Judge to have determined whether the premises had been let prior to 1. 3. 72 or subsequent to that date. If the premises had been let after that date clearly the provisions of the Act would not apply.

It is also in evidence that the defendant's father was the original tenant of this premises since 1914 and the defendant had become the tenant of the premises only after the father's death in August 1972. Therefore, it was necessary for Court to have considered

whether the defendant became a statutory tenant after the death of his father or whether there was a fresh contract of tenancy between the plaintiff and the defendant. No issues have been framed to this effect and therefore there is no determination as to whether the defendant was a statutory tenant succeeding to his father's tenancy of the premises in suit on the death of the father under the provisions of the Rent Restriction Ordinance or whether he became the tenant on a fresh contract of tenancy.

Section 93 of the Civil Procedure Code states that a Court shall have full power of amending at its discretion and upon such terms as to costs etc. all pleadings and processes in an action by way of addition, alteration or omission. The limitation with regard to the scope of the amendment is contained in the proviso to Section 45 of the Civil Procedure Code.

In the case reported in 64 NLR 529 it was held that in exercising the discretion vested in Court by Section 93 of the Civil Procedure Code regarding amendment of a plaint, two main rules emerged from decided cases, (1) amendment should be allowed if it is necessary for the purpose of raising the real question between the parties and (2) an amendment which works an injustice to the other side would not be allowed. In the case reported in AIR 1957 S. C. 357, it was stated that :—

“Circumstances are a factor to be taken into account in the exercise of the discretion as to whether amendment be ordered and does not affect the power of the Court to order it after what is required in the interests of Justice.”

In the case reported in 64 NLR para 25 it was stated *obiter*

“The Civil Procedure Code gives in section 93 ample power to amend pleadings. Moreover, by virtue of section 146 of the Code, a case must be tried upon the ‘issues on which the right decision of the case appears to Court to depend,’ and it is well settled that the framing of such issues is not restricted by the pleadings.”

Under Section 146 of the Civil Procedure Code the ultimate responsibility of framing issues is cast upon Court and for that purpose the Court has to ascertain upon what material proposition of fact or of law the parties are at variance and thereupon record issues upon which the right decision of the case appears to the Court to depend.

A large volume of evidence had been led in respect of these two matters and there could be no doubt that from the evidence that the real issues in this case which had arisen for determination are in respect of these two legal positions on which no issue had been framed. I accordingly set aside the judgment of the Court of Appeal and remit this case for further trial in the original Court on the following additional issues only in addition to the issues already framed in this case.

Answers to issues 1 to 14 already given will stand and will not be affected by the four additional issues 15 to 18 :-

15. Is the plaintiff the owner of more than one residential premises ?
16. If this issue is answered in the affirmative, can the plaintiff maintain this action in terms of paragraph 22(1A) of Rent Act No. 7 of 1972 as amended by Rent Amendment Law No. 10 of 1977 ?
17. Did the defendant become the tenant of the Plaintiff as from 1. 9. 72 on a fresh contract of tenancy ?
18. If so, can the plaintiff have and maintain this action under the provisions of the Rent Act No. 7 of 1972 as amended by Law No. 10 of 1977 ?

Parties would be at liberty to lead further evidence on matters raised on these issues only. The order for costs made by the District Court and Court of Appeal are set aside and I make order that all costs in this action be costs in the cause.

SAMARAWICKREMA, J. I agree.

WANASUNDERA, J. I agree.

*Appeal Allowed and case remitted for trial on additional issues framed by Court.*