

L. F. A. SILVA
v.
ELEANOR FERNANDO

COURT OF APPEAL.
GOONEWARDENA, J., AND VIKNARAJAH, J.
C. A. No. 38/79(F).
D. C. NEGOMBO No. 549/RE.
JANUARY 25, 1986.

Landlord and tenant—Ejectment on the ground of deterioration of premises let—Rent Act No. 7 of 1972, s. 22(1)(d)

Deterioration of premises let as founding a suit in ejectment means deterioration of the building or any part of a building together with the land appertaining thereto. The cutting down of trees on the land and the breaking of the ceiling and a few glass panes cannot be said to bring about a deterioration of the condition of the premises as contemplated in s. 22(1)(d) of the Rent Act

APPEAL from judgment of the District Court of Negombo.

Dr. H. W. Jayewardene, Q.C. with *Bimal Rajepakse* for defendant-appellant.

H. L. de Silva, P.C. with *N. R. M. Daluwatte, P.C.* and *A. de Silva* for plaintiff-respondent.

Cur. adv. vult.

March 2, 1988.

GOONEWARDENE, J.

This action commenced by the plaintiff-respondent in the District Court was one primarily intended to eject the defendant-appellant from premises bearing No. 8, Peiris Lane, 3rd Kurana, within the Municipal Council limits of Negombo. There was also a claim for damages.

It is common ground that the premises are subject to the provisions of the Rent Act No. 7 of 1972 and in the particular circumstances of this case it is appropriate to commence by outlining briefly the structure of the plaintiff's case upon her plaint and that can conveniently be done by reference first to the notice to quit relied upon by her dated 25th November 1975 (P6). While terminating the contract of tenancy between the parties the "reasons" given in such notice for calling upon the defendant to quit the premises are set out as (a) the act of the defendant in cutting off a few days prior to 5th September 1976 the top of a well-bearing jak tree standing on the premises and also lopping off its branches causing damage to the premises in Rs. 500; (b) cutting down on or about the same date a well-bearing mango tree standing on the premises causing loss to the plaintiff (quantum unspecified) and (c) the ceiling of the house being broken in two places and the glass panes of some doors and windows being broken as a result of acts committed by the defendant or due to the neglect or default of the defendant or the inmates of the house. This notice attributed to the defendant the motive of revenge with respect to the causing of the damage to the jak tree and mango tree while the damage to portions of the house are described as having had the effect of bringing about the result that the condition of the premises had deteriorated.

The plaint was substantially on the same basis with the difference that the damage caused as a result of cutting the mango tree was quantified at Rs. 300 and it repeats in the same form as in the notice to quit the allegations of revenge with respect to the damage to the trees and the deterioration of the premises as a result of damage to the portion of the house.

The defendant denied his liability to pay damages or quit the premises and at the conclusion of the trial the District Judge held with the plaintiff that there was deterioration of the premises and that the

defendant was therefore liable to be ejected and to pay damages in Rs. 500 and hence this appeal.

The liability of the defendant to be ejected from the premises relied upon here is that created by section 22(1)(d) of the Rent Act, the relevant portion of which reads:—"..... the condition of the premises has, in the opinion of the Court, deteriorated owing to acts committed by or to the neglect or default of any such person" (that is any person residing or lodging with the tenant or his sub tenant).

At the hearing before us therefore the question arose as to what particular acts the plaintiff complained of upon his plaint that brought about such deterioration. Upon a reading of the plaint it appears to me, as was also the argument of Dr. Jayewardene, Counsel for the appellant, that the language used and the arrangement of the paragraphs limited such acts to the damage caused to the building which while not quantified in terms of money was said to have had this result, while the damage to the two trees was assessed in terms of money and was described as resulting from acts prompted by revenge. Mr. De Silva, Counsel for the respondent appeared to argue that that was an unrealistic way of looking at the plaint as a whole and to give it that narrow construction was without justification. He contended that certain acts were set out both in the notice to quit and in the plaint, the ground on which ejection of the defendant was sought, namely deterioration of the premises was stated and that the approach which the District Judge himself adopted was to see whether these acts resulted in such deterioration. I am not convinced about the validity of this argument and I fail to see why if that was the plaintiff's case she did not say so clearly both in her notice to quit and upon her plaint. Mr. De Silva also argued that the position had been clarified by the plaintiff's main issue No. 1 adopted at the trial. But there again I think he comes up against the same difficulty. The issue cast in Sinhala in the form suggested by plaintiff's Counsel and adopted by the District Judge rendered into English broadly in the manner Mr. De Silva himself translated for us at the hearing reads thus: "Have these premises deteriorated by reason of the neglect or wilful acts of the defendant or persons residing with him as set out in paragraphs 4, 5, 6 and 7 of the plaint." This issue is seen to be along the lines of the plaint (and the notice to quit) and what therefore the District Judge was called upon to decide upon that issue with respect to the deterioration of the premises was whether that was brought

about as a result of damage to the building itself (and not trees) as was the plaintiff's case presented to the Court on her plaint. The District Judge not having found for the plaintiff regarding damage to the building as alleged, should have therefore held that it was not established that the condition of the premises had deteriorated in that manner and accordingly should have dismissed the plaintiff's action based upon that ground. For the purposes of this appeal strictly it would suffice to say that and then reversing the District Judge's conclusion on that question, allow the appeal. However, with a view to achieve some measure of completeness, I will proceed to deal with some other aspects of the case based upon the arguments presented before us and for that purpose treat the plaintiff's case as if she had presented it on the footing that the deterioration of the premises had been caused as a result of damage to the trees as well.

The first question then is whether if trees standing on the land are damaged it can be said that there can consequently be a deterioration of the condition of the premises. Dr. Jayewardene contended against such a view and drew our attention to the definition of 'premises' in section 48 of the Rent Act where the word is said to mean any building or part of a building together with the land appertaining thereto. Mr. De Silva's rival submission in this regard was that trees are attachments to the appurtenant land and thus form part of it and therefore any damage to the trees is by extension damage to the appurtenant land and therefore to the premises and thus the question gets reduced to one of fact whether damage to trees in a particular case results in deterioration of the premises. He contended that on this basis there is a finding of fact in the plaintiff's favour which this Court should be slow to interfere with. I am not convinced that Mr. De Silva's contention is a tenable one with respect to this particular ground of ejection. The definition may perhaps be wide enough to embrace that meaning in other contexts, but here what we are concerned with is whether the condition of the premises has deteriorated. I cannot subscribe to a view that cutting of trees can be said to bring about a deterioration of the condition of the premises and the sense one should derive from these words is, as I see it, if not to restrict the kind of damage capable of causing a deterioration of the premises to mean damage to the building itself or part of it, at least not to extend it to include damage to such things as trees. If the words in the definition of 'premises' in section 48 are implanted into section 22(1)(d) as best as possible in place of that word there, the relevant

part would read something like "the condition of the building or part of the building together with the land appurtenant thereto has deteriorated." Such an exercise I think brings out better the sense of this provision as it commends itself to me by directing emphasis on the words "building or part of the building."

That apart, on the factual aspect of the matter the evidence led on behalf of the plaintiff herself suggests that the two trees in question had certain areas decayed in the region of the trunk. It seems to me, upon reviewing the evidence overall, that the acts of the defendant complained of with respect to these trees were not motivated by revenge as claimed by the plaintiff, but rather done in the interests of safety to persons and property. Whether this ground of ejection even if applicable to damage to trees was ever intended to apply in such circumstances I very much doubt.

The District Judge held by way of conclusion that by the defendant's wilful acts of cutting a mango tree and a part of the jak tree the condition of the premises had deteriorated. The plaintiff's own evidence with respect to the jak tree is that after the branches were cut it started sprouting out new branches and whether then it can be said that there was any damage to the tree is doubtful. Most important, I cannot reconcile this finding of there being a wilful act of cutting trees which resulted in a deterioration of the premises with the District Judge's own answer to issue No. 1 I earlier referred to, that it was the negligence of the defendant which brought about the deterioration of the premises.

Dr. Jayewardene adduced an argument based upon the legal relations that existed between the parties consequent upon the termination of the tenancy between them by a notice to quit issued by the plaintiff prior in point of time both to P6 the notice to quit relied upon in the action and to when the damage to the premises complained of was said to have been caused. His argument appeared to be that there is no status known to the law called a "statutory tenant", although that expression is commonly used and that the provisions of section 22(1) (d) of the Rent Act had no application to one in the position of the defendant. In view of the conclusions I have reached for other reasons it does not become necessary to deal with that contention.

The District Judge in my view misdirected himself both in his approach to the entire case and in his answers to the principal issue

and his judgment cannot be allowed to stand. This appeal therefore is allowed and the plaintiff's action in the result will stand dismissed with half taxed costs payable in the District Court. The respondent will pay the appellant Rs. 315/- as costs in this Court.

VIKNARAJAH, J. — I agree.

Appeal allowed.
