

WIJENATHAN
v.
THE BISHOP OF CHILAW

COURT OF APPEAL.
ABEYWARDENA, J. AND PERERA, J.
C.A. 10/80.
M.C. COLOMBO (CIVIL) 31/GE.

Landlord and tenant – Premises let in 1964 later made subject of trust – Death of landlord – Trustee’s right to sue for ejectment on grounds of arrears of rent and reasonable requirement – Only issue at trial reasonable requirement – Scope of trust – S. 22(7) of the Rent Act.

The Bishop of Chilaw being a corporate body is not entitled in terms of s.22(7) of the Rent Act to sue the tenant in ejectment on the ground of reasonable requirement for “occupation as a residence for the landlord or any member of the family of the landlord or for the purpose of the trade, business, profession, vocation or employment of the landlord” unless the ownership of such premises was acquired by the landlord on a date prior to the specified date or where the ownership of such premises was acquired by inheritance or gift from a parent or spouse who had acquired ownership of the premises, prior to the specified date. The Bishop had acquired the premises many years subsequent to the going into occupation of the tenant and that upon a bequest by a last will. The testator was neither a parent or spouse of the Bishop.

A claim in reasonable requirement will fail where the landlord has no beneficial interest in the premises. Further the trust was solely for the support of St. Joseph’s Home for the Aged, Lansigama, Marawila and not for what the premises were proposed to be used, namely, a community centre, home for orphan girls, nursery school and sales outlet for articles produced by the orphan girls.

Case referred to:

Parker v. Rosenberg – [1947] KB 371.

APPEAL from judgment of the Magistrate’s Court of Colombo (Civil).

P. A. D. Samarasekera, P.C. with *A. L. M. de Silva* for respondent-appellant.

K. Kanag-Iswaran for petitioner-respondent.

January 15, 1987.

ABEYWARDENA, J.

The petitioner-respondent, the Bishop of Chilaw, a corporation duly incorporated by the Roman Catholic Archbishops and Bishops Ordinance, in his capacity as the executor, of the Last Will and Testament of the owner of a residential premises, instituted an action against the respondent-appellant seeking ejectment of the respondent-appellant from the premises of which the respondent was the tenant.

The premises, the subject-matter of the action, came within the provisions of the Rent Act and is a residential premises, the standard rent of which exceeds Rs. 100 per month.

The appellant came into occupation of the premises as a tenant under the testator who was then the owner, in 1964. When the respondent was a tenant the premises was bequeathed by the then landlord by his Last Will to the respondent, subject to a Trust created by such Last Will. The landlord testator died in 1971 and the premises devolved on the respondent. The appellant has, thereafter attorned to the respondent and became a tenant of the same premises under the respondent.

The action for ejectment of the appellant from the premises was on two grounds, viz. arrears of rent and also that the premises were reasonably required by the respondent for use in connection with the Trust created by the Last Will. The respondent-appellant in his answer stated that the respondent had no legal grounds to file action. The ground regarding the arrears of rent was not put in issue at the trial. The only issue at the trial was the question of reasonable requirement. At the end of the trial, the learned District Judge entered judgment in favour of the respondent. This is an appeal against the order of the learned District Judge.

According to the Last Will of L. B. Samarawickrame, the premises were given and devised "to be solely for the support of St. Joseph's Home for the Aged at Lansigama, Marawila". In the same Will, another land, Udawela Estate, has been devised to the respondent to be used "solely for the support of St. Anne's Nursing Home, Marawila". Learned counsel for the appellant submitted that what was

meant was that the income from the premises in question which was a residential house had to be used for the support of St. Joseph's Home as there was an income by way of rent from it. At the trial evidence was led that the upstairs of the premises was occupied by Reverend Nuns and that the ground floor was reasonably required by the respondent for a community centre, a home for orphan girls, a nursery school, and for a sales point of the articles produced by the orphans in order to raise funds. Learned counsel for the appellant submitted that the establishment of a Home for orphan girls and a nursery school and a sales point in the premises went outside the scope of the object of the Trust as these cannot be solely for the support of St. Joseph's Home. He further submitted that if the respondent was suing the appellant in a representative capacity as an Executor, then he is unable to maintain an action for ejection of a tenant on the ground of reasonable requirement. If he is suing as a trustee of a Trust property for the use of beneficiaries he cannot maintain the action on the ground of reasonable requirement as the legal estate is only in the trustee, and the beneficial estate is in others. It was submitted that the action has to fail, since the respondent has no beneficial interest.

It was also the submission of counsel for the appellant that the action to eject the appellant on the ground of reasonable requirement is not maintainable in terms of section 22(2)(b) of the Rent Act as the premises have to, in the opinion of the Court, be reasonably required for occupation as a residence for the *landlord or any member of the family of the landlord* or for the trade, business, profession, or vocation or employment *of the landlord*. He also contended that the appellant is debarred from maintaining this action in terms of section 22(7) of the Rent Act, since the "premises was acquired by the landlord on a date subsequent to the specified date by inheritance or by gift other than inheritance or gift from a parent or spouse who had acquired ownership of such premises on a date prior to the specified date". He submitted that the premises in suit is residential premises and the parties have admitted that the standard rent for a month exceeded Rs. 100. That the action is for ejecting the appellant on the ground that the premises are reasonably required for occupation by the respondent upon the death of the testator in December 1972. The appellant has been a tenant from 1964 long before that date. He further submitted that the devise of these premises by Last Will is an inheritance and even if it be argued that this is not an inheritance, on the death of the testator, it certainly is a gift to the Roman Catholic

Bishop of Chilaw, though the property is subject to a trust. The respondent has acquired title upon the Last Will as a trustee and whether it be an inheritance or a gift, it is not one acquired by the respondent from a parent or spouse. The appellant has remained in occupation of the premises after the death of the testator attorning tenancy to the respondent in 1972 and has paid rent to the respondent as the landlord. He contended that in terms of section 22(7) of the Rent Act, no action for eviction on grounds of reasonable requirement is available to the respondent.

This action has been filed by the respondent on the basis that the Bishop of Chilaw is a corporation sole and the landlord. No action or proceeding for the ejection of the tenant on the ground of reasonable requirement can be instituted unless the reasonable requirement is for any of the objects or purposes for which the body is constituted. As far as the premises are concerned, the petitioner is also a trustee and, according to the conditions contained in the Last Will, the premises has "to be used solely for the support of St. Joseph's Home for the Aged, Lansigama, Marawila", whereas the reasonable requirement as pleaded in paragraph 3 of the Concise Statement is "Church Work", though this may be the object or purpose for which the corporated body has been constituted.

Learned counsel for the respondent submitted that no issues were raised at the trial regarding the capacity of the respondent to maintain the action and that the question was whether the respondent was suing in his representative capacity or as the executor. He contended that the proviso of section 22(7) of the Rent Act did not apply to this action for the reason that the term 'Landlord' does not include a corporate body and that the legislature did not intend to extend the applicability of sub-section 7 of section 22 to a body corporate or incorporate and therefore, the respondent was in law entitled to maintain the action on the ground of reasonable requirement even if the purchase, inheritance, or gift has been other than from a parent or spouse. He also submitted that a corporate body cannot inherit property and that the term 'landlord' in section 22(7) does not refer to a corporate body and that the acquisition of the premises by the respondent has not been by purchase, inheritance or gift, but in trust. That one can inherit as an heir under a Will and that such an heir should be a natural person and any inheritance by a person other than an heir is as a legatee and that an inheritance is a disposition in a Will to a person named the heir.

Learned counsel for the respondent submitted that a corporate body cannot be an heir and, therefore, has not the legal capacity to inherit by a Will, and that the Bishop of Chilaw has not inherited the property of Mr. Samarawickrama in terms of section 22(7) of the Rent Act.

The burden of proving reasonable requirement of a premises is on the landlord who must show that he is acting bona fide and reasonably in the requirement of the premises and this has to be decided by weighing the hardships caused on either side when an action is filed for ejectment on this ground. The object of the trust has to be also considered, taking into consideration the purpose for which the premises are stated to be required for possession. These are matters of fact.

A claim in reasonable requirement will fail where the landlord has no beneficial interest in the premises. It has been held in *Parker v. Rosenberg* that trustees were precluded from recovering possession on the ground of reasonable requirement as they had no beneficial interest in the dwelling house.

If a charitable Trust has been created by the Last Will of the former landlord of the appellant, the trustee of this Trust is debarred from maintaining the action on the ground of reasonable requirement, as he is not possessed of the beneficial interest in the premises. The object of the Trust is set out clearly in the Last Will as "solely for the support of St. Joseph's Home for the Aged, Lansigama, Marawila". This is not the reasonable requirement set out in paragraph 3 of the Concise Statement of facts of the respondent and, according to the evidence of Rev. Sister Maria.

An inheritance is one that devolves from a Will resulting in the acquisition of property. An heir is a person who succeeds to the assets of a deceased person according to the testator's wishes by a Will. Such an heir can be any person, even a slave, Church or a corporation, being the person whom the testator has appointed. Anything that devolves from a Will is an inheritance which even a corporate body can inherit. The respondent, a corporate body, has inherited the premises in question by the Last Will which gifted the premises to the corporate body, subject to a Trust specifying its object.

The appellant has attorned to the respondent as the landlord after the death of the testator since the premises have been devolved on

the respondent. The respondent has accepted rent for the premises from the appellant as he was the person for the time being entitled to receive the rent, thereby becoming the landlord of the premises.

The respondent, being the landlord whether he be executor, trustee, or a corporate body is not in law entitled to maintain an action for ejection of a tenant on the ground of reasonable requirement in terms of section 22(2) (b) of the Rent Act, No. 7 of 1972, unless the reasonable requirement is for the occupation as a residence for the landlord or any member of the family of the landlord or for the purpose of the trade, business, profession or vocation or employment of the landlord and even if the landlord is a body of persons, corporate or incorporate, shall be deemed to be required for the purpose of the business of the landlord to carry out the objects or purpose for which the body is constituted.

In terms of section 22(7) of the Rent Act, no action or proceedings for the ejection of the tenant, notwithstanding anything in the provisions of the Act, shall be instituted on the ground of reasonable requirement for occupation as a residence for the landlord or any member of the family of the landlord or for the purposes of the trade, business, profession, vocation or employment of the landlord, unless the ownership of such premises was acquired by the landlord on a date prior to the specified date or where the ownership of such premises was acquired by inheritance or gift, unless the inheritance or gift by which such premises was acquired was from a parent or spouse who had acquired ownership of the premises, prior to the specified date.

In the instant case the ownership of the premises was acquired many years subsequent to the date the appellant became the tenant and the mode of acquisition of the ownership was by the Last Will of Mr. Samarawickrama who bequeathed it to the respondent. The testator was neither a parent nor the spouse of the respondent.

I am, therefore, of the opinion that the respondent was not entitled to maintain the action to evict the appellant from the premises on the ground of reasonable requirement.

The order of the learned District Judge is set aside and the appeal is allowed. The appellant is entitled to Rs. 315 as costs.

PERERA, J. – I agree.

Appeal allowed.