FERDINANDS v. PILIMATALAWA

COURT OF APPEAL
RATWATTA, J. & ATUKORALE, J.
C. A. 395/79 F D.C. KANDY 953/RE
JUNE 10, 1980

Landlord and Tenant – Reasonable requirement – Rent Act No. 7 of 1972 sections 21 (1) (b); 22 (1) (bb) – Rent Restriction Act, Sections 8 (C); 22 (8); 48 – Availability or non-availability of alternative accommodation to the tenant.

Admittedly the provisions of the Rent Act applied to the premises in suit after the tenancy commenced. The landlord sued the tenant to have her ejected from part of premises let to her on the ground that it was reasonably required for his occupation as residence.

Held:

1. In deciding whether the premises was reasonably required for the occupation as a residence for the landlord, all the surrounding relevant facts must be considered. The lack of alternative accommodation for the tenant is one such relevant fact. The burden of proof that there was a lack of other suitable accommodation was on the defendant. To discharge that burden the tenant should have placed before court positive evidence of the matter and details of the attempts made to obtain other accommodation.

2. The words "premises which have been let to the tenant prior to the date of commencement of this Act" in section 22(1)(bb) can only refer to tenancies created before the date of commencement of the principal Act. This Act received assent on 1.3.1972 which is also the date of commencement. The date on which the provisions of the Act are brought into operation in a specified area by the

Minister by notification in the Government Gazette under section 2(1) of the Act cannot be constitute the date of the commencement of the Act.

Cases referred to:

1. *Gunasena* v. *Sangaralingam* (1948) 49 NLR.473.
2. *Saris Silva* v. *Sumathipala* (1956) 58 NLR 427.

APPEAL from the Order of the District Court of Kandy.

N. R. M. Daluwatta for the Defendant-Appellant.

P. Somatillakam for the Plaintiff-Respondent.

Cur adv vult.

30th July, 1980.
ATUKORALE, J.

The plaintiff, who is the landlord and the respondent to this appeal, filed this action for the ejectment of her tenant the defendant, who is the appellant, from the premises more fully described in the schedule to the plaint. The schedule described the premises as all that divided portion of land marked lot A1 as depicted in extract of plan No. 2131 made by R. A. W. N. Jayatunga, Licensed Surveyor, and after setting out its four boundaries it further described the same as 'containing in extent two roods (OA.2R.00P.) together with the bungalow standing thereon (exclusive of the bedroom adjoining the sitting room, the lavatory and the garage)'. The plaint averred that the premises were reasonably required for occupation as a residence for the plaintiff. The defendant in her answer stated that the building in question was leased out by her from the plaintiff in the first instance for a period of 6 months from October 1974 at a monthly rental of Rs. 250/-. Subsequently she paid a sum of Rs. 1000/- being rental for a further period of 4 months and finally leased out the same for a further period of one year from August 1975 for a sum of Rs. 3000/-. She paid the plaintiff a total sum of Rs. 5500/-. She stated that the building was situated in an area governed by the provisions of the Rent Act and that the authorised monthly rental was Rs. 92.87. She also stated that as at the end of August 1978 she had paid a sum of Rs. 1506/59 cts. in excess of the authorised rent and claimed this sum from the plaintiff. She also claimed a sum of Rs. 826/- for certain improvements to the building. She thus claimed these two sums aggregating to Rs. 2332.59 cts. in reconvention. The plaintiff in her replication averred that the Rent Act No. 7 of 1972 became applicable to the premises in suit only in October 1975 and denied that any sum was due from her on account of excess rent. She also denied liability to pay compensation in respect of any improvements effected by the defendant.

At the commencement of the trial it was admitted by both parties that the Rent Act came into operation in the area in which the premises in suit was situated on 1.10.1975. It was also admitted that the plaintiff on or about 29.10.1976 gave the defendant notice to quit and vacate the premises on or before 31.10.1977, i.e. one year's notice, as the premises were required for the plaintiff's occupation as a residence. The main issue that was raised and that arose for determination by court was whether the premises were reasonably required for the occupation of the plaintiff as a residence. The learned Additional District Judge after hearing the evidence answered this issue in favour of the plaintiff and ordered ejectment of the defendant from the premises in suit. The defendant has now appealed from this judgment.

The main ground on which learned Counsel for the defendant pressed this appeal before us was that the plaintiff had not made out a case for reasonable requirement. His complaint was that in analysing the evidence in the case the learned Judge had failed to consider two important matters; firstly the fact that alternative accommodation was available to the plaintiff in the premises itself and secondly that there was no evidence to show that any alternative accommodation was available to the defendant.

It is now settled law that in rent and ejectment cases in deciding whether the premises are reasonably required for occupation as a residence for the landlord all the surrounding relevant facts must be considered. The lack of alternative accommodation for the tenant is one such relevant fact – vide *Gunasena v. Sangaralingam Pillai.*[1] In that case in construing the words 'reasonably required' in section 8(c) of the Rent Restriction Ordinance, the provisions of which are similar to those of section 22(1)(b) of the Rent Act No. 7 of 1972, it was held that the court must take into consideration not only the position of the landlord but also of the tenant together with any other factors that may be directly relevant to the acquisition of the premises by the landlord.

On a perusal of the judgment as well as the evidence in this case it appears to me that the learned Judge has addressed his mind to the first of the two matters aforementioned, namely that the plaintiff had reserved for herself a bedroom, lavatory and a garage out of the premises as set out in the schedule to the plaint. The learned Judge has also come to the conclusion (in my view, correctly) that this 'accommodation' which she has reserved is not suitable and that it is not possible for her to live therein. The plaintiff is a very old spinster, 71 years old at the time she gave evidence. The evidence was that

the bedroom was adjoining the sitting room. There was no evidence to indicate that it had a separate access. Access was very probably through the sitting room. As pointed out by learned Counsel for the plaintiff, the plaintiff and the defendant belonged to two different races and religions and their social habits and customs too probably differ. The defendant herself was suffering from high blood pressure and is a heart patient whilst her eldest son suffered from a mental ailment. Apart from her husband, she had 4 other sons all of whom except the youngest were grown up and unemployed. The plaintiff would not have the use of a kitchen to prepare meals. Nor would it have been possible for her to live in solitary confinement all by herself in the bedroom. Her age was such that she would want someone else to attend on and look after her. There was no evidence to show that these facilities were available to her. Further the present litigation itself would very likely cause much displeasure between the parties and their mutual feelings would have been strained. Under the circumstances it appears to me that the learned Judge was correct in concluding that it would not be possible for the plaintiff to live in this room. In fact the evidence is that she had not at any time after the commencement of the tenancy done so. Learned Counsel for the defendant also cited the case of *Saris Silva v. Sumathipala* [2] in support of his submission on this point. But I am of the view that the facts in that case can be distinguished from those in the instant case. In that case there was evidence that the landlord had at his disposal suitable premises which he could appropriate for his use and under the circumstances it was held that he failed to discharge the burden of proving that he reasonably required the premises which were the subject-matter of that action. As set out above in the instant case there is no such evidence and the plaintiff in this case has in my view *prima facie* discharged the burden of proving that he reasonably requires the premises in suit for her occupation.

The second matter which learned counsel for the defendant urged before us was that the learned Judge had failed to take into consideration the fact that there was no alternative accommodation available to the defendant and her family. A perusal of the judgment shows that the learned Additional District Judge has not considered the question whether alternative accommodation was or was not available to the defendant. Learned Counsel for the plaintiff maintained that no evidence was led to establish that the defendant had in fact looked for or made any effort to secure other accommodation. As such he submitted there was no necessity for the learned Judge to have addressed his mind to the question of the availability or non-availability of alternative accommodation to the defendant. The only evidence on this aspect of the case is that of the

defendant's husband. During the course of his evidence he said that if the defendant is ordered to vacate the premises, they will be unable to look for a place to go to immediately. Later on he also stated that if they were ejected there will be no place for them to go to. This is all the evidence on this point. Learned Counsel for the defendant contended that in view of this evidence there was no necessity for the defendant to lead evidence of the efforts made by her or her husband to secure alternative accommodation. He maintained that the plaintiff should have, if he challenged this evidence, cross-examined the defendant's husband and elicited the particulars of the efforts made to secure other accommodation. I do not agree with this contention of learned Counsel for the defendant. The burden of proving that there was a lack of other suitable accommodation was on the defendant. To discharge that burden she should have placed before court positive evidence of the nature and details of the attempts made by her or her husband to obtain other accommodation. The bare word of the defendant's husband that they have no other place to go to is in my view insufficient. It is the court that decides whether there is or is not a lack of alternative accommodation to the defendant. It is the duty of the defendant to establish facts from which the court could infer that there is no other suitable place for her to reside in. The law requires that in a case of this nature the tenant should be given one year's notice. This in my view is to ensure that the tenant gets sufficient time to look for and secure another place. Hence the tenant must always be in a position to place before court the details of the various attempts made by him to find out another place. No such evidence was led in this case. Even in her answer the defendant has not referred to any efforts made to look for another place. The oral evidence of her husband was that when the plaintiff refused to grant a further lease of the premises he asked for two years time to vacate the premises for the reason that he had invested a large amount of money on the poultry business that was being carried on in these premises and not because of any difficulty in securing other accommodation for their residence. Taking into consideration all these matters I am of the opinion that the defendant has not led any evidence to show that he searched for alternative accommodation. There was thus no proof of the lack of such accommodation to the defendant. As such the learned Judge was not called upon to consider the question of alternative accommodation to the defendant. I am therefore of the view that the learned Judge has made a correct analysis of the evidence in this case and that his decision on the main issue in the case is justified.

Learned counsel for the defendant also made another submission to us which he stated was purely a question of law which had not

been raised in the lower court. He contended that even if the plaintiff is entitled to a decree for ejectment she is not entitled to a writ of possession in execution of such decree until after the Commissioner of National Housing has notified to court that he is able to provide alternate accommodation to the defendant in terms of S.22 (1C) of the Rent Act No. 7 of 1972 as amended by the Rent (Amendment) Law, No. 10 of 1977. It is clear that sub-section (1C) to S.22 relates to decrees for the ejectment of tenants of premises the standard rent of which do not exceed Rs. 100/- per month and which have been let prior to the date of commencement of the Rent Act. In the instant case it is not denied that the standard rent per month for the premises in suit is less than Rs. 100/-. Hence the only question that arises for consideration is whether the premises were let to the defendant prior to the date of commencement of the Rent Act. It was the submission of learned Counsel for the defendant that as the premises were first let to the defendant in 1974 and that as the Rent Act was brought into operation in the area in which the premises are situated on 1.10.1975, the premises had therefore been let prior to the date of commencement of the Act. I do not think there is any merit in this submission. The words 'premises which have been let to the tenant prior to the date of commencement of this Act' in S.22(1)(bb) can only refer to tenancies created before the date of commencement of the principal Act (the Rent Act No. of 1972). This Act has received assent on 1.3.1972 which is also the date of commencement. The date on which the provisions of the Act are brought into operation in a specified area by the Minister by notification in the Government Gazette under S.2(1) of the Act cannot in my view constitute the date of commencement of the Act. I therefore hold that S.22(1)(bb) has no application to this case as the tenancy commenced after the commencement of the Act.

Finally learned counsel for the defendant submitted that the decree entered in this case is not in conformity with S.22(8) of the Rent Act. This sub-section provides that where a decree for the ejectment of the tenant of any premises is entered by court on the ground that the court is of opinion that the premises are reasonably required for occupation as a residence for the landlord or any member of his family, the court shall in such decree direct that no person, other than the landlord or some member of his family whose name shall be specified in the decree, shall enter into occupation of the premises upon vacation thereof by the tenant or upon the ejectment of the tenant therefrom. This appears to me to be a mandatory provision of law. The decree entered in this case contains no such directions, and has thus to be amended. S.48 of the Act defines 'member of the family' of any person to mean the spouse of

that person, or any son or daughter of that person over 18 years of age. The evidence in this case is that the plaintiff is a spinster. As such there are no members of her family as contemplated in the definition. Hence the only amendment that the decree requires is the insertion of a direction that no person other than the plaintiff shall enter into occupation of the premises in suit the vacation thereof by the defendant or upon the ejectment therefrom of the defendant. We therefore direct that the decree be amended accordingly.

During the course of his submissions learned Counsel for the plaintiff tried to contend that there was evidence to show that the house in question was adjunct to the land and as such the Rent Act does not apply. He also moved to frame two additional issues to that effect. This was objected to by learned counsel for the defendant. I do not think the plaintiff should be permitted at this stage to frame these issues. Quite apart from the fact that there is no evidence on this point, it would radically alter the entire basis of the plaintiff's action. Having come to court on the basis that the provisions of the Rent Act apply to the premises in suit, it is now not open to him to resile from that position and take up an entirely different position.

For the above reasons we affirm the judgment of the learned Additional District Judge and subject to the aforementioned variation in the decree we dismiss this appeal with costs.

RATWATTE, J. – I agree.

Appeal dismissed.