M. M. PERERA

v.

D. M. J. DE SILVA

COURT OF APPEAL.
G. P. S. DE SILVA, J. (PRESIDENT C/A) AND GOONEWARDENA, J.
C.A. 636/79(F).
D.C. PANADURA 15431/RE.
MAY 15, 1987.

Landlord and tenant–Deposit of rent with local authority by daughter of tenant–Arrears of Rent–Authorised person–s. 21 of Rent Act No. 7 of 1972.

The original landlord died devising the premises in suit to the plaintiff, one of his children. The rent as they fell due were being deposited by the tenant's daughter at the Urban Council, Moratuwa. The point raised was that section 21 enables only the tenant (and no other person) to pay rent to the "authorised person" instead of the landlord. There was nothing in the receipts or in any other document to indicate that the daughter paid the rent on behalf of her father. There was however an admission by the plaintiff that defendant had deposited the rent in the name of plaintiff's deceased father even after his death. But the will had not yet been proved and there were other heirs. Further the plaintiff was aware that the rent was being deposited at the U.C., Moratuwa by the defendant. The defendant too had written to the U.C., Moratuwa that rent would be paid by his daughter.

Held–

It would be quite unreal in the circumstances of the case to hold that rents were being deposited at the U.C. by the tenant's daughter on her own behalf and not on behalf of her father. Therefore such deposit falls within s. 21(1) of the Rent Act and the payment must be "deemed to be a payment received on that day by the landlord of the premises from the tenant thereof." The defendant was not therefore in arrears.

Section 21 should not be construed in an unduly narrow and technical manner.

Case referred to:

(1) *Husseniya v. Jayawardena and another [1981] 1 Sri LR 93*

APPEAL from judgment of the District Court of Panadura

A. C. Gooneratne, Q.C. with *R. C. Gooneratne and Laduwahetty* for the defendant-appellant

P. A. D. Samarasekera, P.C. with *Jayantha de Almeida Guneratne* for the plaintiff-respondent.

Cur. adv. vult.

July 03, 1987

G. P. S. DE SILVA, J.

The plaintiff as landlord instituted this action on 3rd March 1975 to eject the defendant, his tenant, from the premises in suit on the ground of arrears of rent. The case for the plaintiff was that the defendant was in arrears of rent from November 1972 for a period of well over 3 months. Admittedly, the rent was Rs. 28.34 per month. The defendant in his answer pleaded that he deposited the rent at the Urban Council, Moratuwa. He accordingly denied that he was in arrears of rent.

It is common ground that the defendant was originally the tenant under the plaintiff's father, one D. H. L. de Silva, who died in December 1972. It is also not disputed that the plaintiff's father died leaving a last will (P8) by which he devised these premises to the plaintiff. Admittedly, the last will P8, was not proved and it is common ground that besides the plaintiff the deceased left two other children as his heirs.

After trial, the District Judge held with the plaintiff on the issue of arrears of rent. Judgment was accordingly entered in favour of the plaintiff. Hence the present appeal by the defendant.

At the hearing before us, Mr. Samarasekera, Counsel for the plaintiff-respondent, very properly conceded that the rent for the relevant period alleged to be in arrears was regularly deposited at the Urban Council, Moratuwa. It is common ground that the "authorized person" within the meaning of section 21 of the Rent Act, No. 7 of 1972 was the Urban Council, Moratuwa. It is further not in dispute that the rent deposited was in respect of the premises in suit. Mr. Samarasekera, however, strenuously contended that the payment of rent to the Urban Council was not sufficient to discharge the liability of the defendant for the reason–

(*a*) that the rent was not paid by the *tenant* as required by section 21; and

(*b*) that there was no payment of rent in favour of the plaintiff who was the landlord.

At this point it is necessary to set out the provisions of section 21 of the Rent Act No. 7 of 1972 on which the defendant relied for his defence, while it was submitted on behalf of the plaintiff that this section had no application to the facts in the instant case.

Section 21 reads thus:

"21. (1) The tenant of any premises may pay the rent of the premises to the authorized person instead of the landlord.

(2) Where any payment of any rent of any premises is made on any day in accordance with the provisions of sub-section (1), it shall be deemed to be a payment received on that day by the landlord of the premises from the tenant thereof.

(3) Where the rent of any premises is paid to the authorized person, the authorized person shall issue to the tenant of the premises a receipt in acknowledgement of such payment, and shall transmit the amount of such payment to the landlord of the premises. It shall be the duty of such landlord to issue to the authorized person a receipt in acknowledgement of the amount so transmitted to him.

(4) In this section, "authorized person" with reference to any premises, means the Mayor, or Chairman of the local authority within whose administrative limits the premises are situated or the person authorized in writing by such Mayor or Chairman to receive rent paid under this section, or where the Minister so determines, the board of the area within which the premises are situated."

Mr. Samarasekera stressed that section 21 enables only the tenant (and no other person) to pay rent to the "authorized person" instead of the landlord. Council submitted that the receipts D3 to D22 issued by the Urban Counsel show that the payment of rent was made not by the defendant who was the tenant but by one Mallika Perera who was the daughter of the defendant. Counsel therefore urged that the defendant could not rely on the provisions of section 21 of the Rent Act as the receipts for rent issued by the local authority clearly show that it was not the tenant but his daughter who paid rent. He emphasised the fact that there is nothing in the receipts nor in any other document to indicate that Mallika Perera paid rent on behalf of her father.

This submission does not commend itself to me. Admission No. (3), recorded at the commencement of the proceedings reads thus:–

"මෙම විත්තිකරු 1972 දෙසැම්බර් මාසයෙන් පසුවත් ඩී. එච්. එල්. ද සිල්වා නමැති මිය ගිය තැනැත්තාගේ නමින් කුලී තැන්පත් කර ඇති බව."

(This defendant has deposited rent in the name of the deceased D. H. L. de Silva even after December 1972). There is here a clear admission that it was the defendant who deposited the rent. The plaintiff too under cross-examination admitted, that he was aware that the defendant was depositing the rent at the Urban Council, and that he requested the defendant to pay the rent to him. Besides, the letter dated 20th June 1973 addressed to the Chairman of the Urban Council, Moratuwa, by the defendant (D2) states that hereafter rent in respect of these premises would be paid by his daughter Mallika Perera. On a consideration of the admission referred to above, the oral evidence of the plaintiff and the letter D2, it seems to me quite unreal to take the view that the daughter Mallika Perera, paid rent on her own behalf and not on behalf of her father.

In support of the submission that section 21 of the Rent Act requires that payment of rent to be valid must be a payment made by the tenant, Mr. Samarasekera relied on *Husseniya v. Jayawardena & another* (1). That was a case where the plaintiff sued the 1st and 2nd defendants for ejectment on the ground that her, tenant, the 1st defendant, was in arrears of rent and also on the ground that the 1st defendant had sub-let the premises to the 2nd defendant. The 2nd defendant's position was that he was not a sub-tenant of the 1st defendant but that he was the tenant under the plaintiff and that since the plaintiff refused to accept the rent, he (2nd defendant) had deposited the rent at the Municipal Council. At the hearing of the appeal, the finding that the 1st defendant was the tenant and the 2nd defendant was his sub-tenant was not canvassed. It was also not disputed that the 2nd defendant had deposited the rent for the relevant period at the Municipal Council. The only question before the Supreme Court was "whether such payment by the 2nd defendant constituted valid payment of rent to the plaintiff so as to wipe out the 1st defendant's arrears of rent". The finding that the 1st defendant himself had failed to pay rent was not challenged. Having referred to the evidence Sharvananda, J. (as he then was), stated: "The conclusion is irresistible that the 2nd defendant did not make the deposit in the Municipality in the name of the 1st defendant, but made

it in his own name in the purported discharge of his obligation *qua tenant.*" (The emphasis is mine). Thus it is seen that the Supreme Court was dealing with a case where the person who deposited the rent at the Municipal Council was himself claiming to be the tenant and it was inconveivable that he would have made the deposit in the name of another (1st defendant) who, according to him, was his licensee. In the appeal before us, however, as stated earlier, the deposit of rent was made by Mallika Perera, the daughter of the defendant and it was not the case of either the plaintiff or the defendant that Mallika Perera was claiming to be the tenant or claiming any other right to occupy the premises in suit. The decision relied on by Mr. Samarasekera is, therefore, clearly distinguishable from the instant case. It seems to me that on the facts it is fair and reasonable to hold that the deposit of rent by Mallika Perera was on behalf of her father, the admitted tenant of these premises. Thus the deposit of rent in resect of these premises at the Urban Council, Moratuwa, falls within the provisions of sub-section 1 of section 21 of the Rent Act.

Once it is established that the payment of rent has been in accordance with section 21 (1) of the Rent Act, then section 21 (2) provides that such payment "shall be *deemed* to be a payme received on *that day by the landlord* of the premises from the ten thereof". It is quite true that, as stressed by Mr. Samarasekera, t deposit of rent has been in the name of the deceased father of the plaintiff. At the same time, it is relevant to note that even prior to the death of the plaintiff's father, rent had been deposited at the Urban Council (vide D1 and P5 dated 7.1.76) and that this practice has continued even after his death. There is also the additional fact (as stated earlier) that the last will P8 has not been proved and the intestate heirs of the original landlord included not only the plaintiff but his two sisters as well. In view of these special circumstances, it appears to me that it would not have been unreasonable for a prudent tenant to have had recourse to the provisions of section 21 of the Rent Act, even though the uncontradicted evidence of the plaintiff was that the defendant had earlier agreed to pay rent to him. In any event, the plaintiff has not been actually denied the benefit of the moneys deposited at the Urban Council as evidenced by P5 which is a letter written by the Special Commissioner of the Urban Council requesting the plaintiff to call over at the office and receive the rent. But Mr. Samarasekera submitted that P5 is dated 27.4.76 which is after the date of action and the summons returnable date. But the answer to

this is that section 21 (2) deems such payment to be "a payment received on that day by the landlord ..... from the tenant".

As observed by Sharvananda, J. in *Husseniya v. Jayawardena* (supra) "Section 21 of the Rent Act has appointed the local authority to be the statutory agent of the landlord for the due payment of rent". It seems to me that a court should not construe this section in an unduly narrow and technical manner as contended for on behalf of the respondent. If it does so, the salutory provisions contained therein would, to a large extent, be rendered nugatory.

On a consideration of the totality of the material placed before the court, I am of the opinion that the deposit of rent made at the Urban Council, Moratuwa, in respect of the premises in suit, attracts the benefit of the provisions of section 21 of the Rent Act and thus the finding of the trial Judge that the defendant was in arrears of rent cannot be sustained. I accordingly allow the appeal, set aside the judgment and decree and dismiss the plaintiff's action but without costs. In all the circumstances of this case, I make no order as to costs of appeal.

GOONEWARDENE, J.—I agree.

Appeal allowed.