ISMATH
v.
SELLADURAI

SUPREME COURT.
FERNANDO, J.
DHEERARATNA, J. AND
WADUGODAPITIYA, J.
S.C. 26/94
C.A. 502/91 – D.C. COLOMBO 7336/RE
AUGUST 25, 1995.

Landlord and Tenant – Rent Act, No. 7 of 1972 – Sections 22(1) (b), 22(1) (bb) and 18 – Meaning of the words "premises which have been let to the tenant on or after commencement of this Act" – Attornment – When the premises have been let.

In 1941 the plaintiff's mother let the premises in suit to the defendant's father. The premises were gifted to the plaintiff by her mother in 1986. Defendant's father, the original tenant, died in 1965 and her mother succeeded to the tenancy. Upon her death in 1982, the defendant succeeded. After the premises were gifted to the plaintiff the defendant attorned to her on 1.9.1986. The plaintiff filed action to eject the defendant on the ground of reasonable requirement in terms of subsection 22(1) (b) on the basis that the premises were let to the defendant after the commencement of the Rent Act (1.3.1972). The question arose as to the applicability of that subsection. The District Court held that the subsection applied but the Court of Appeal held that it did not.

Held:

1. The wording of the subsection 22(1) (b) unequivocally suggests that the tenant whose ejectment is sought and the tenant to whom the premises have been let, is one and the same person.

2. Words "which have been let to the tenant" are descriptive of the "premises". This description is made in relation to the tenant and not in relation to the landlord; therefore the attornment of the tenant to the landlord in 1986 has no relevance.

3. The ordinary meaning of the word "let" is "to grant to a tenant or hirer". That word cannot mean anything other than creation of the tenancy in respect of the premises with the tenant whose ejectment is sought; it is rather artificial to colour the meaning of that word with reference to a contract of letting which subsisted with the original tenant.

4. The premises have been let to the defendant-tenant in 1982, that is after the commencement of the Rent Act and the plaintiff-appellant is therefore entitled to succeed.

Cases referred to:

1. *Weerasuriya v. Manamperi* (1992) 1 Sri LR 31
2. *Sriyani Peris v. Mohamed* (1986) 2 Sri LR 384
3. *Fernando v. Wijesekera* (1969) 73 NLR 10
4. *Justin Fernando v. Abdul Rahaman* (1951) 52 NLR 463.
5. *Miriam Lawrence v. A. V. Arnolda; 1984 Bar Association Law Journal* Vol. 1 Part IV 136; (1981) 1 Sri LR 232.
6. *Chinnamma v. Dewan Harish* AIR 1972 (Delhi) 182 at 189.

APPEAL from judgment of the Court of Appeal.

A. A. M. Marleen with *Ms. R. Lamahewa* and *M. Fawzin* for appellant.
S. Mahenthiran for respondent.

Cur. adv. vult.

September 28, 1995.
DHEERARATNE J.

In 1941 the plaintiff's mother let the premises which is the subject matter of this action to the defendant's father. The plaintiff bacame owner of the premises in 1986 by virtue of a deed of gift from her mother. Defendant's father, the original tenant, died in 1965 and her mother succeeded to the tenancy; upon her death in 1982, the defendant succeeded as the tenant of the premises. After the premises were gifted to the plaintiff, the defendant attorned to her as her tenant. In 1989 the plaintiff filed this action against the defendant in terms of subsection 22(1) (b) of the Rent Act, No. 7 of 1972, on the ground of reasonable requirement of the premises for her occupation as a residence. At the trial it was recorded as an admission that the defendant became a tenant of the plaintiff from 1.9.1986 (that being the date of attornment).

The learned trial judge gave judgment in favour of the plaintiff, but the Court of Appeal reversed that judgment and made order

dismissing the plaintiff's action. The plaintiff has now appealed to this court.

The only question canvassed before us is the applicability or otherwise of the wording of subsection 22(1) (b) to the facts of the present case and there is no doubt that if the words are inapplicable, the plaintiff's action was rightly dismissed. The words of that subsection relevant to the facts are as follows:-

Not withstanding anything in any other law, no action or proceeding for the ejectment ***of the tenant*** *of any premises... shall be instituted in or entertained by any court, unless where – such premises, being premises which have been* ***let to the*** *tenant on or after the date of commencement of this Act, are... reasonably required for the occupation as a residence for the landlord...*

Subsection 22(1) (bb), similarly worded, refers to premises let to the tenant prior to the commencement of the Act. The date of the commencement of the Act is 1.3.1972. The contention on bealf of the defendant, which found acceptance with the Court of Appeal, was that inasmuch as the premises were **not let to the tenant** on or after the commencement of the Act, the plaintiff's action cannot be founded on subsection 22(1) (b). This contention is based on the hypothesis that there was only one contract of letting of the premises and that was between the plaintiff's mother on the one hand as the landlord and the defendant's father on the other as the tenant; the defendant's mother and later the defendant merely succeeded to the tenancy rights of the original tenant of the premises; the premises were not let either to the defendant or to her mother; they succeeded to the tenancy by operation of law.

Support for this view principally came from the judgment of the Court of Appeal in *Weerasuriya v. Manamperi* [1] where the Court was called upon to interpret the words "Premises **let to the tenant** prior to the commencement of the Act" in the subsection 22(1) (bb). In that case the original tenant took the premises on rent in 1968 and his son, the defendant, succeeded to the tenancy on his father's death in 1980 by operation of law. The Court of Appeal held that there was no

fresh contract of the tenancy and it could not be said that the premises were let after the commencement of the Act; therefore the action was properly brought under subsection 22(1) (bb). I Shall advert to this case again later in this judgment.

In a case decided by the Court of Appeal earlier viz. *Sriyani Peris v. Mohamed* [2], the Court held that subsection 22(1) (bb) refers to the current landlord and a fresh tenancy was created under the current landlord to whom the tenant had attorned [See *Fernando v. Wijesekara* [3] & *Justin Fernando v. Abdul Rahaman* [4]] and on that basis the premises have been let after the Act came into operation. In *Fernando v. Wijesekera* (*Supra*) Weeramantry J. summed up,

> *"We see that the notion of attornment contains no element which points to the continued existence of the prior contract – a meaning which is often mistakenly supposed to be in the term."*

Learned counsel for the plaintiff-appellant in the instant case too advocated the same line of reasoning. The Court of Appeal failed to consider this aspect of the case because it was under the misapprehension that the plaintiff succeeded as the landlord at the death of her mother, whereas her mother was still alive when the District Court action was proceeding according to the evidence led. Learned counsel contended that the question whether a fresh letting took place after the date of commencement of the Act in consequence of the attornment should have been answered in the affirmative and the plaintiff was entitled to succeed on that ground.

It would seem that in *Weerasuriya's case* (*supra*) the Court of Appeal accepted the submission of learned counsel for the respondent that the *case of Sriyani Peris* (*supra*) could be distinguished on the basis that there is no statutory provision in the Rent Act for succession of a landlord in the event of his death unlike in the case of a tenant where specific provision is made. But the decision in *Weerasuriya's case* (*supra*) was primarily based on the dicta of Ismail, J. in the case of *Miriam Lawrence v. A. V. Arnolda* [3]; the Court of Appeal said that the dicta, which it quoted, were binding on it, being a pronouncement of the Supreme Court. Ismail, J. stated

in that case (with Samarawickrama, J. and Wanasundara, J. agreeing) –

> *"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 1.3.1972 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 the premises since 1941 and the defendant had become the tenant of this premises only after the father's death in August 1972. Therefore, it was necessary for the Court to have considered whether the defendant became a statutory tenant of the premises in suit on the death of the father under the provisions of the Rent Restriction Ordinance (sic) or he became a tenant on a fresh contract of tenancy".*

It does not appear to me that Ismail, J. ventured to express an opinion that the concept of continuation of a contract of letting under a deceased tenant by his successor should be used as an aid to interpret the word "let" in that subsection. If he did so it was only inferentially, for, the case was remitted to the District Court for further trial on additional issues indicated by Court, one being – "Did the defendant become the tenant of the plaintiff as from 1.9.1972 on a fresh contract of tenancy?" It is correct to say then, with great respect to Ismail, J. that his observations made are clearly obiter.

Learned counsel for the plaintiff-appellant contends that upon attornment in 1986, a new contract of tenancy came into being [citing *Fernando v. Wijesekera* (*supra*)] between the new landlord and the present tenant; that the letting under that contract took place in 1986, and was thus after 1.3.72; that it is the letting by the current landlord that is relevant [*Sriyani Peiris v. Mohamed* (*supra*)] and hence section 22(1) (b) applied. But it seems to me that this is not the real issue,

because even though the letting under the present contract occurred in 1986, what is relevant under the statutory provision is when the premises were let to the tenant, whether by the present landlord, or under the subsisting contract of tenancy, or otherwise.

It was submitted on behalf of the defendant-respondent, on the other hand, that attornment does not create a new contract; that admittedly there was a contract of tenancy between landlord and tenant in 1941: that despite subsequent devolution of rights and/or succession to the interests of the original parties to the contract, these did not give rise to a new contract, and that the successors merely stepped into the shoes of their respective predecessors; and that, therefore, the same contract continued to operate, so that for the purposes of section 22(1) (b) the premises had been let to the present tenant, the defendant-respondent, in 1941. It was pointed out to him that this interpretation could result in an obvious absurdity that premises may then have to be regarded as having been let to a person at a date even prior to his birth.

Neither of these contentions afford a satisfactory basis for interpreting section 22(1) (b). We have to determine the meaning of the phrase "premises which have been let to the tenant on or after the date of commencement of this Act."

It is clear that "tenant" means the present tenant, namely the particular individual whom the landlord wishes to eject from the premises, and does not mean or include any former tenant, even if the present tenant is the successor to such tenant. Section 22(1) (b) contemplates an action for the ejectment of **the tenant of any premises** and the premises are described as being premises which **have been let to the tenant**. The wording therefore, unequivocally suggests that the tenant whose ejectment is sought and the tenant to whom the premises have been let is one and the same person. Reasonable requirement cannot involve the need of any former occupant of the premises.

This phrase gives rise to no difficulty where subsequent to the contract of tenancy between a landlord and a tenant, there has been

neither a change of landlord occurring upon an attornment consequent upon a transfer or devolution of title of the landlord, nor a change of tenancy occurring by reason of succession upon the death of the tenant. In such cases, if the contract created a tenancy on or after 1.3.72, this necessarily meant that the premises were "let" to the tenant on or after 1.3.72.

Difficulties do arise, however, where such changes have taken place. The question then is whether this phrase means–

(a) premises let to the present tenant, under a contract of tenancy entered into on or after 1.3.72; and if so, whether in cases of attornment and/or succession to tenancy, the contract of tenancy between the present landlord and the present tenant is the identical contract which subsisted between the original landlord and the original tenant (and not a different contract though in terms similar to the original contract); or

(b) premises which the present tenant had commenced to occupy, *qua* tenant, on or after 1.3.72.

The phrase in question refers only to the nexus between the tenant and the premises; the relevant issue thus is whether the premises in suit were let to the present tenant on or after 1.3.72. This phrase makes no reference to the nexus between the tenant and the landlord, and hence the question whether such letting was by the present landlord or by a former landlord does not arise.

If the construction sought to be given by learned counsel for the defendant-respondent for the word "let" is correct, no premises referred in subsections 22(1) (b) or 22(1) (bb) could ever be recovered by a landlord on the ground of reasonable requirement once the original tenant dies and he is succeeded by a person specified in terms of the Act, as such person will not be the person to whom the premises have been let. If the legislature ever contemplated imposing such a drastic fetter on the landlord's rights of recovering premises on the grounds of reasonable requirement, it could have been done not indirectly as suggested, but directly, as

done with reference to the date of acquisition of ownership of the premises by the landlord, by enacting subsection 22(7).

Let me demonstrate the mischief likely to be caused to a tenant if the interpretation advanced by the defendant to the word "let" is applied to another section of the Rent Act. Section 18 of the Act reads –

> *"Where any building used for residential purposes which is* ***let to a tenant*** *is demolished on an order made under the provisions of the House and Town Improvement Ordinance, the owner of the land on which the demolished building stood shall not construct any building or buildings on such land except with the permission of the board. The board in granting such permission may by order fix the number of residential units that shall be constructed in such land. Such owner shall let one of the residential units so constructed to* ***the tenant*** *of the demolished building, if* ***such tenant*** *makes a request therefor."*

Can the owner of the residential units so constructed be heard to say that a particular tenant is disentitled to make a request for a new unit, because the demolished building was not let to him, but to his dead ancestor, whose successor the tenant became by operation of law? The absurdity is obvious.

It seems to me that in the context in which the word "let" appears in the subsection, it cannot mean anything other than creation of the tenancy in respect of the premises with the tenant whose ejectment is sought. If the question is asked, "to whom are the premises let", the obvious answer is they are let to the defendant tenant; and if it is asked "from when have they been let to the defendant tenant"?, the answer is equally obvious – from 1982. The ordinary meaning of the word "let" as given in the Chambers 20th Century Dictionery is "grant to a tenant or hirer." It would be rather artificial to colour the meaning of the word "let" with reference to a contract of letting which subsisted with the original tenant. As expressed by Deshpande, J. in, the case of *Chinnamma v. Dewan Harish* [6]. " the word let is an ordinary word and is not a term of art. It has, therefore, to be

construed in its ordinary sense. It simply means creation of a tenancy." On this ground the plaintiff is entitled to succeed.

After reaching the decision of this case, I have had the occasion to refer to the published official Sinhala version of the Rent Act No. 7 of 1972. The subsection 22(1) (b) reads as follows :-

අන් කිසි නීතියක කුමක් සඳහන්ව ඇතද එය නොතකා..... යම් ස්ථානයක කුලී නිවැසියා නෙරපීම සඳහා.....ඒ ස්ථානය එය මේ පනත ආරම්භ වීමේ දිනයෙහි හෝ දිනයෙන් පසු කුලී නිවැසියාට දෙන ලද ස්ථානයක් නම්, ගෙහිමියාගේ..... පදිංචිය පිණිස වාසස්ථානයක් වශයෙන්..... යුක්ති සහගත ලෙස අවශ්‍ය බව උසාවියේ මතය වුවහොත් මිස.....කිසිදු උසාවියක නඩුවක් හෝ නීති කෘතියක් නොපැවරිය යුතු අතර කිසිදු උසාවියක් විසින් එවැන්නක් හාර නොගත යුතුය.

The Sinhala version accords with the construction I have given to the subsection.

For the above reasons the appeal is allowed, the judgment of the Court of Appeal is set aside and the judgment of the District Court is affirmed. The plaintiff-appellant is entitled to recover costs of the Court of Appeal and of this Court fixed at Rs. 5000. The defendant is given time till 1.03.1996 to quit the premises and deliver possession to the plaintiff. The plaintiff will be entitled to take out writ of ejectment without notice to the defendant after 1.03.1996.

FERNANDO, J. – I agree.

WADUGODAPITIYA, J. – I agree.

Appeal allowed.