SUMANASEKARE
v.
PEIRIS

COURT OF APPEAL.
WEERASEKERA, J. (P/CA),
WIGNESWARAN, J.
C.A. NO. 470/84 (F).
D.C. COLOMBO NO. 5284/RE.
MAY 16, 1997.
JULY 7, 1997.

Rent Act, No. 7 of 1972 – Law No. 10 of 1977 – S. 22 1 (bb) – S. 22 (1A) – S. 22 (7) – Single house owner – Reasonable requirement – Non production of Title Deeds.

The plaintiff-appellant filed action under s. 22 (1) (*bb*) of the Rent Act, and averred that he is not an owner of more than one residential house and pleaded that the premises are reasonably required for him and his family for residence. The defendant-respondent in his answer claimed that, the plaintiff-appellant, cannot maintain the action as he became the landlord only after 8. 1. 81. The District Court dismissed the plaintiff's action holding that ingredients under s. 22 (1) (*bb*) and s. 22 (7) have not been proved and that the plaintiff had become the landlord after 8. 1. 81.

On Appeal –

Held:

1. s. 22 (1) (*bb*) brought in a limited class of tenants who were in occupation before 1. 3. 1972, whereas s. 22 (1) (*b*) referred to tenants who came into occupation on or after 1. 3. 1972. Difference lay in the length of time the tenant had been in occupation and not on whether his landlord has changed.

2. The words "which have been let to the tenant" were descriptive of the premises, the description is made in relation to the tenant and not in relation to the landlord – the attornment to the landlord has no relevance.

3. Thus, the date on which the tenant first came into occupation was what was relevant to s. 22 (1) (*bb*) and not the date of commencement of tenancy between the current landlord and such tenant.

The words 'let to the tenant prior to the date of commencement of the Act must, therefore, mean the first letting. On attornment landlord changed but the occupation of the original tenant continued.

4. The District Court erred in considering the date on which the plaintiff became the landlord by attornment as the relevant date for the purpose of applicability of s. 22 (1) (*bb*).

5. S. 22 (1A) is only concerned about the plaintiff owning more than one residential premises and not the absolute ownership of the premises in suit. There was no need to file his title deeds and prove title to the single house he allegedly owned.

APPEAL from the judgment of the District Court, Colombo.

Cases referred to:

1. *Sriyani Peiris v. Mohamed* – [1986] 2 Sri L.R. 384.
2. *Ismath v. Selladurai* – [1995] 1 Sri L.R. 353.
3. *Sulaiman v. Aboobucker* – [1992] 1 Sri L.R. 314.
4. *F. S. Hettiarachchi v. Siri Hettiarachchi* – SC Appeal No. 58/94 SCM 15. 12. 94.

P. A. D. Samarasekera, PC with *R. Y. D. Jayasekera* for plaintiff-appellant.

A. K. Premadasa, PC with *C. E. de Silva* for defendant-respondent.

Cur. adv. vult.

February 13, 1998.

WIGNESWARAN, J.

The plaintiff-appellant filed this action under section 22 (1) (*bb*) of the Rent Act as amended to recover possession of premises No. 85/2, Polhengoda Road, Colombo 05.

The following admissions were recorded:

(i) Tenancy admitted.

(ii) Admission regarding receipt of notice to quit.

(iii) Admission that the defendant became a tenant under the father of the plaintiff and came into occupation prior to 1972.

The following issues were framed:

Plaintiff's Issues :

(i) Is the standard rent of the premises in suit below Rs. 100 per month?

(ii) Is the plaintiff not an owner of more than one residential premises?

(iii) Are the premises reasonably required by the plaintiff and his family for residence?

(iv) Has notice of this action been given to the Commissioner of National Housing?

(v) Are the premises in suit residential premises?

(vi) If above issues are answered in favour of the plaintiff is he entitled to the reliefs prayed for in the plaint?

Defendant's Issues :

(vii) Did the plaintiff beome the landlord of the defendant only after 08. 01. 1981?

(viii) If so can the plaintiff have and maintain this action?

After trial the learned Additional District Judge, Colombo, delivered judgment dated 26. 10. 1984, dismissing the action of the plaintiff answering the issues as follows:

(i) Yes.

(ii) Not properly proved.

(iii) Yes.

(iv) Yes.

(v) Yes.

(vi) No. Since ingredients of sections 22 (1) (*bb*) & 22 (7) of Rent Act, No. 7 of 1972 not proved.

(vii) Yes.

(viii) Due to the above answer given to issue No. 7 the plaintiff cannot maintain this action. Also due to non-proof regarding bar under section 22 (7) this case cannot be maintained.

It would be seen that except for issues 2 and 6 other issues of the plaintiff had been answered affirmatively. Therefore, the admissions and the findings of the learned Additional Disrict Judge may be summarised as follows:

(i) Tenancy admitted.

(ii) The standard rent of premises in suit is under Rs. 100 per month.

(iii) The premises are reasonably required by the plaintiff and his family for residential purposes.

(iv) Notice of this action has been given to the Commissioner of National Housing.

(v) Notice to quit admitted by defendant.

(vi) The defendant came into occupation of the premises in suit as tenant prior to 01. 03. 1972 under plaintiff's father.

The basis on which the learned Additional District Judge dismissed the action are:

(i) The fact of the plaintiff being a single house owner not proved. (Issue 2).

(ii) Ingredients of section 22 (7) not proved. (Issue 6).

(iii) The plaintiff became the landlord only after 08. 01. 1981. (Issue 7).

(iv) Consequential issue 8.

The learned President's Counsel appearing for the plaintiff-appellant has argued that :

(i) Defence under section 22 (7) had not been taken up either in the answer or during trial.

(ii) In any event the ingredients of section 22 (7) are not matters to be proved by the plaintiff as a part of his case.

(iii) Section 22 (1) (*bb*) of the Rent Act refers to the date of letting to the tenant only and not when the plaintiff became landlord by attornment.

These matters would now be examined.

Sections 22 (1) (*bb*) and 22 (1A) of the Rent Act are as follows:

"22 (1) Notwithstanding anything in any other law, no action or proceedigs for the ejectment of the tenant of any premises the standard rent (determined under section 4) of which for a month does not exceed one hundred rupees shall be instituted in or entertained by any Court, unless where - . . .

(*bb*) such premises, being premises which have been let to the tenant prior to the date of commencement of this Act, are in the opinion of the Court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord . . . "

"22 (1A) Notwithstanding anything in subsection (1) the landlord of any premises referred to in paragraph (*bb*) of that subsection shall not be entitled to institute any action or proceedings for the ejectment of the tenant of such premises on the ground that such premises are required for occupation as a residence for himself or any member of his family, if such landlord is the owner of more than one residential premises and unless such landlord has caused notice of such action or proceedings to be served on the Commissioner of National Housing."

Clearly, the section refers to the *premises in suit* being "let to the tenant" prior to the date of commencement of the Act. Letting here is descriptive of the premises and in relation to the tenant. It does not refer to the date on which the plaintiff let premises out.

What was determined by another Bench of this Court in *Sriyani Peiris v. Mohamed*[1] was that where there was attornment there was a termination of the tenancy under the original landlord and that a new tenancy was created from the date of attornment under the new landlord to whom the tenant attorns and pays rent.

This determination in that case was the outcome of an argument by the counsel for the plaintiff-appellant in that case that the same contract under the father continued under the son. The question of continuance or termination of the contract after attornment, we believe, is irrelevant to the matter under consideration, viz. interpretation of section 22 (1) (*bb*). It is important to remember that section 22 (1) (*bb*) was a later addition into section 22 of the Rent Act, No. 7 of 1972 by section 2 of Law No. 10 of 1977. The said subsection sought to give certain benefits to single house owners whose tenants had come into occupation of the premises in suit as far back as prior to the date of commencement of the Rent Act. Section 22 (1) (*b*) which

was the only section dealing with reasonable requirement under the Rent Act. No. 7 of 1972 earlier, referred to the letting of a premises to a tenant on or after the commencement of the Rent Act. The new section on the other hand referred to tenants who occupied the premises prior to the coming into effect of the Rent Act. Those tenants who paid rents under Rs. 100 per month and came into occupation of their premises prior to 01. 03. 1972 were earlier (prior to Law No. 10 of 1977) protected from being ejected on the ground of reasonable requirement under the original Rent Act. The exception that was introduced by Law No. 10 of 1977 was the enabling of the eviction of a tenant occupying the premises belonging to a single house owner, such a tenant occupying the premises in suit from a date anterior to the commencement of the Rent Act. The ingredients were: (1) standard rent under Rs. 100 per month. (2) letting to the tenant prior to 01. 03. 72. (3) reasonable requirement as residence for the landlord or any member of the family of the landlord. (4) landlord a single house owner. (5) notice to Commissioner of National Housing and (6) 6 months' notice of termination of tenancy.

It is worthy of note that section 22 (1) (*bb*) did not refer to reasonable requirement for purposes of trade, business, etc., of the landlord.

Under section 22 (1) (*b*) the notice period was one year. To help single house owners the notice period was reduced to 6 months. [vide proviso to section 22 (6)].

The difference between section 22 (1) (*b*) and 22 (1) (*bb*) was essentially the date on which the tenant first came to occupy the premises in suit. Section 22 (1) (*b*) referred to tenants who came into occupation on or after 01. 03. 1972 only. Section 22 (1) (*bb*) brought in a limited class of tenants who were in occupation before 01. 03. 1972. Difference lay in the length of time the tenant had been in occupation of the premises in suit and not on whether his landlord had changed. This is further brought into focus by the law governing residential premises the Standard Rent of which for a month exceeded Rs. 100 [ie section 22 (2)]. The grounds for ejectment in section 22

(2) were identical with the grounds for ejectment in section 22 (1) subject to a few vital differences which were (*a*) in the case of arrears of rent, the rent must have been in arrears for one month after it had become due and (*b*) in the case of reasonable requirement there was no distinction made out between tenants who came into occupation prior to the date of commencement of the Act and those who came in, on or after the date of commencement of the Act.

Looking for a clue from the scheme of the Rent Act we find that under section 22 (7) the "specified date" means the date on which the current tenant came into occupation of the premises or the earlier tenant, upon whose death the tenant for the time being succeeded, came into occupation of the premises.

In *Ismath v. Selladurai*[2] the Supreme Court held that the words "which have been let to the tenant" were descriptive of the premises. This description, it was held was made in relation to the tenant and not in relation to the landlord. Therefore, it was pointed out by Their Lordships, that attornment of the tenant to the landlord had no relevance. Thus, the date on which the tenant in this case (who had not been replaced by another in terms of section 36 of the Act) first came into occupation of the premises in suit was what was relevant to section 22 (1) (*bb*) and not the date of commencement of tenancy between the current landlord and such tenant. The words "let to the tenant prior to the date of commencement of this Act" must, therefore, mean the first letting. In fact, on attornment the landlord changed but the occupation of the original tenant continued. This is factually so.

The learned Additional District Judge was, therefore, in error in considering the date on which the plaintiff became the landlord by attornment as the relevant date for the purpose of the applicability of section 22 (1) (*bb*). Thus, issue No. 7 should have been answered in favour of the plaintiff.

As to the question of whether the plaintiff was the owner of more than one residential premises (issue 2) the evidence in chief at page 39 of the brief runs as follows:

අධිකරණයෙන්

ප්‍ර: තමන්ට මේ ගෙය අයිති වුනේ කොහොමද?

උ: පියාගෙන් උරුම වුනා.

ප්‍ර: පියා ඉන්නවාද?

උ: ඔව්.

ප්‍ර: ඔප්පුවකින්ද ලියල දුන්නේ?

උ: ඔව්.

At page 42 during cross-examination he stated as follows:

ප්‍ර: කොහොමද මේ නඩුව දමා තිබෙන ස්ථානය තමුන්ට අයිති වුනේ?

උ: මගේ පියාගෙන්.

ප්‍ර: අද ඒ ඔප්පුව ගෙනැත් තිබෙනවාද අධිකරණයට?

උ: අද ගෙනාවේ නැත.

ප්‍ර: මොන වර්ෂයේද ඔප්පුව ලිව්වේ?

උ: 1979. 02. 02.

At page 53 during re-examination the plaintiff said as follows:

නැවත ප්‍රශ්න

ප්‍ර: මේ ගෙය හැර තමාට තව ගෙවල් තිබෙනවද?

උ: නැත.

Thus, the plaintiff had given evidence that he was the owner of the premises in suit and that he was not the owner of any other house. The defendant had not disputed the ownership of the plaintiff. In any event she had admitted tenancy under him. No evidence had been led to show that the plaintiff owned any other residential premises. Thus, the plaintiff's evidence stood unchallenged.

It was the contention of Mr. Premadasa, President's Counsel appearing for the defendant-respondant, that the deed by which the plaintiff-appellant became owner was not submitted to Court. There was no need for the plaintiff to produce such deed and prove his title since his title was never disputed. In any event the production of such deed was not going to prove whether the plaintiff owned any other house or not, unless the deed on the face of it referred to another house. The only relevant matter to be considered under section 22 (1A) was whether the landlord was the owner of more than one residential premises.

The uncontradicted oral testimony that the plaintiff was the owner of the residential premises in suit and that he owned no other residential premises should have been accepted as sufficient by the learned Additional District Judge. If it was the contention of the defendant-respondent that the plaintiff-appellant did not own the premises in suit, the cross-examination should have brought this matter into focus and the plaintiff-appellant could then have produced his deed. Or else if it was the contention of the defendant-respondent that the plaintiff-appellant owned more than one house then the burden was cast on the defendant-respondent to prove such a fact in the light of the plaintiff-appellant giving evidence that he owned no other residential premises. The plaintiff-appellant could not have proved the negative.

In any event it must be remembered that section 22 (1A) is only concerned about the plaintiff owning more than one residential premises and not the absolute ownership of the premises in suit. There was no need on his part to file title deeds and prove title to the single

house he allegedly owned. Suppose the deed was filed it would not have been open for a defendant, for example, to start questioning the title of the plaintiff picking some titular irregularity in the deed. Therefore, it would be wrong to insist on the production of a deed in proof of title though if filed it would have been convenient to Court.

Mr. Premadasa's contention was that section 22 (1A) was the outcome of enlightened social legislation and that it only applied to owner landlords and therefore an owner landlord should prove his ownership. One would prefer to say that section 22 (1A) of the Rent Act debarred a landlord owning more than one residential premises from filing action rather than say that the section expected a single house landlord to prove his title to his sole residential premises to file an action under it. It is not the character of the landlord's ownership of the premises in suit that is relevant but whether he owned more than one residential premises. Thus, the non-production of the deed in favour of the plaintiff-appellant could not have been held against the plaintiff-appellant by the learned Additional District Judge.

In *Sulaiman v. Aboobacker*[3] it was held that a landlord who was a life-interest holder or a tenant having a subtenant with the consent of the landlord or a co-owner is entitled to maintain an action for ejectment even though he may not own a house.

In *F. J. Hettiarachchi v. Siri Hettiarachchi*[4] His Lordship Chief Justice G. P. S. de Silva held that in cases where the nature of occupation was relevant the question of title was irrelevant.

Therefore, the learned Additional District Judge in the absence of any proof that the plaintiff-appellant owned more than one residential premises should have answered issue No. 2 in favour of the plaintiff-appellant.

The other argument of Mr. Premadasa revolves around issue No. 6 and the learned Additional District Judge holding that the ingredients of section 22 (7) were not proved. As pointed out by

Mr. Samarasekera, President's Counsel apearing for the plaintiff-appellant, no defence to the action had been taken at any stage of the trial based on section 22 (7).

The relevant portion of section 22 (7) of the Rent Act is as follows:

"Notwithstanding anything in the preceding provisions of this section, no action or proceedings for the ejectment of the tenant of any premises referred to in subsection (1) or subsection (2) (i) shall be instituted – (*a*) . . .

(*b*) where the landlord is the owner of not more than one residential premises, on the ground that (i) such premises are reasonably required for occupation as a residence for the landlord or for any member of the family of the landlord; or . . .

Whether the ownership of such premises was acquired by the landlord, on a date subsequent to the specified date, by purchase or by inheritance or 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."

The pith and substance of the finding by the learned Additional District Judge was that the failure to tender the deed in favour of the plaintiff raised doubts as to whether the plaintiff acquired the premises in suit by inheritance or gift from a parent who had acquired ownership of such premises on a date prior to the specified date. "Specified date" has been defined in section 22 (7) as the date on which the tenant came into occupation of the premises in suit. The questions and answers earlier referred to, during examination in chief, cross-examination and re-examination of the plaintiff-appellant, very definitely brought out the fact that the plaintiff-appellant received the premises in suit from his father who was the original landlord of the defendant-respondent. If this fact was to be challenged the defendant-respondent should have set up a defence under section 22 (7) and raised an issue. At no stage was this matter raised by the defendant.

If it was raised then the deed could have been produced as documentary proof of the plaintiff receiving the premises in suit from his father. Having failed to do so it would be improper to argue that the plaintiff did not prove the ingredients of section 22 (7). Section 22 (7) is not a provision to be proved by the plaintiff. It is a defence to be taken up by a defendant. If the case falls under the bar set out in section 22 (7) the plaintiff would not be able to have and maintain an action. The defence in this case never referred to the plaintiff being affected by the bar set out in section 22 (7). Only the learned Additional District Judge had thought it fit to refer to it. That too despite the evidence of the plaintiff that he obtained the premises in suit from his father on a date subsequent to the specified date. It was not alleged that the plaintiff was a purchaser over the head of the tenant. Since, the plaintiff had said that he received the premises in suit from his father and that the father was still living there was no question of inheritance from the father. The evidence before the Additional District Judge was that the father who was the original landlord had donated (or gifted or written in favour of) the son the premises in suit. In the light of this evidence and due to the failure of the defendant to raise an issue under section 22 (7) there was no reason as to why the learned Additional District Judge should have entertained doubts with regard to the plaintiff's right to file this action. He may have been taken up by the argument that the plaintiff-appellant claimed inheritance from his father while admitting that his father was still alive. This predilection was brought about by the learned President's Counsel, who appeared for the defendant both in the original Court as well as the Court of Appeal, making much out of the answer of the plaintiff at page 39 as follows: 'පියාගෙන් උරුම වුනා' This answer should have been taken in context or further questions should have been posed by the learned Additional District Judge to clarify matters. In fact, the next two questions by Court, and answer, given by the plaintiff to those questions explained his first answer. He admitted that his father was living and that the father gave the property to him by a deed. Therefore, there was no confusion with regard to the phrase 'පියාගෙන් උරුම වුනා'. It simply meant that the property "came from my father". No questions were posed by the defence to contradict this position.

Therefore, the learned Additional District Judge on the basis that there was uncontradicted evidence that the plaintiff had received the premises in suit from his parent after the specified date should have found him falling within the exception to the bar under section 22 (7) and accordingly answered the issues.

We, therefore, find that issues 2, 6, 8 and 9 have not been properly answered. They should have been answered as follows:

(2) Yes.

(6) Yes.

(7) Yes.

(8) Yes; since section 22 (1) (*bb*) only contemplates the date on which the defendant first came into occupation as a tenant.

Accordingly, we set aside the order dated 26. 10. 1984 delivered by the Additional District Judge, Colombo and enter judgment for plaintiff as prayed for with costs in the original Court.

We allow the appeal but parties shall bear their own costs of appeal.

WEERASEKERA, J. – I agree.

Appeal allowed.