Sellathurai V. Fernando

454/1965

Present:G. P. A. Silva, J., and Alles, J

T. P. SELLATHURAI, Appellant, and MRS. W. A. FERNANDO, Respondent

S. C. 180/1963—D. C. Colombo, 53974

Landlord and tenant—Notice to quit—Computation of one month—Tenant in arrears of rent for three months in breach of s. 13 of Act, No. 10 of 1961—Sufficiency of one month's notice to quit—Rent Restriction Act, No. 29 of 1948, as amended by s. 6 of Act No. 10 of 1961, s. 13 (1A)—Rent Restriction (Amendment) Act, No. 10 of 1961, ss. 6, 13.

(i) Where, in a monthly tenancy, the landlord gave notice to the tenant on 25th May 1961 asking him to quit and deliver possession of the premises on 30th June 1961— *Held*, that the month's notice to quit was a valid notice (provided that it complied with the requirement of the law that a calendar month's notice from the date of the commencement of the tenancy had to be given). *Edward v. Dharmasena* (66 N. L. K. 525) followed.

(ii) Where in a case instituted at the time when the Rent Restriction (Amendment) Act No. 10 of 1961 was in operation, the tenant was in arrears of rent for over three months— *Held*, that three months' notice of termination of the tenancy was not necessary, and that one month's notice was sufficient. Section 13 (1A) of the Rent Restriction Act No. 29 of 1948, as amended by section 6 of Act No. 10 of 1961, does not apply in the case of an action governed by section 13 of Act No. 10 of 1961.

APPEAL from a judgment of the District Court, Colombo.

S. Sharvananda, for the plaintiff-appellant.

Mark Fernando, for the defendant-respondent.

Cur. adv. vult.

July 9, 1965. ALLES, J.—

In this action, the plaintiff sued the defendant for ejectment from premises No. 33, Wolfendhal Street, Colombo, on the ground that the rent had been in arrears for more than three months, in breach of the provisions of section 13 of the Rent Restriction (Amendment) Act No. 10 of 1961 and for the recovery of arrears of rent and damages. On the trial date, it was agreed between the parties that the trial should proceed on Issues 10 and 11, as these Issues would finally dispose of the case. These Issues are in the following terms: —

(10) Is the notice to quit pleaded in para. 4 of the plaint bad in law?

(11) Has the plaintiff failed to give the defendant three months notice as required by section 13 (1) (a) of the Rent Restriction Act No. 29 of 1948 as amended by section 6 of the Rent Restriction Act No. 10 of 1961?

The learned District Judge has answered both these issues in the affirmative and dismissed the plaintiff's action.

According to the plaintiff, the defendant has paid all rents up to the end of May, 1960. On 25th May, 1961 the plaintiff gave notice to the defendant to quit and deliver possession of the premises on the 30th day of June, 1961. The plaintiff's position is that this was a monthly tenancy and hence the notice that had to be given was a month's notice. In dismissing the plaintiff's action on the preliminary issue, the learned District Judge, following the decision of Sri Skanda Rajah, J. in *Abeywickrema v. Karunaratne* [(1962) 63 C. L. W. 23.] held that the notice given by the plaintiff on the 25th day of May, 1961 to quit and deliver possession on the 30th June, 1961 was bad. When the learned District Judge followed the judgment of Sri Skanda Rajah, J. in the above case he did not have the advantage of Justice Sri Skanda Rajah's view in the subsequent

case of *Edward v. Dharmasena* [(1964) 66 N. L. R. 525.] where he revised his earlier decision. We are in agreement with the view taken by this Court in *Edward v. Dharmasena*, and hold that the month's notice given by the plaintiff was a valid notice.

The other ground on which the learned District Judge has dismissed the plaintiff's action is that the plaintiff has failed to give the defendant three months' notice as required by section 13(1) (a) and amended by section 6 of the Amending Act. Counsel for the plaintiff-appellant submits that the learned District Judge has misdirected himself in law in applying section 6 of the Amending Act to the facts of this case. In his submission it is only section 13 of the Amending Act that is applicable. Admittedly, the action was instituted during a period when the Amending Act was in operation. Plaint was filed on the 23rd September, 1961 and at that time the defendant had been in arrears of rent for over three months. The question however arises as to whether the notice as required by section 13 (1A) of the Amending Act has any relevancy to the institution of proceedings for over three months. We agree with the observations of H. N. G. Fernando, J. in *Abdul Rahuman v Abdul Coder* [(1963) 67 N. L. R. 86, at p. 88] that the new section 13 (1A) does not apply in the case of an action governed by section 13 of the Amending Act of 1961. Admittedly in this case three months' notice of the termination of the tenancy had not been given by the plaintiff, but in our view, such notice was not necessary because this was not a case to which section 6 of the Amending Act applied. That section would only apply where the ground for ejectment was that the rent had been in arrear for one month and not three months as in this case.

Counsel for the defendant-respondent however urged before us that in any case the notice that had been issued on his client in this case is bad in law and that therefore the learned District Judge was not in error when he answered Issue 10 against the plaintiff. In Issue 10, reference is made to para. 4 of the plaint in which the plaintiff has referred to the notice given by him which has already been mentioned in the earlier part of this judgment. Counsel's submission is that the notice requiring the defendant to deliver

possession on the 30th June, 1961 was bad since it did not comply with the requirement of the law that a calendar month's notice from the date of commencement of the tenancy had to be given. Counsel for the plaintiff-appellant however, while conceding that there may be substance in the submission made by Counsel for the defendant-respondent before us, stated that he had been taken by surprise on this point because this was not the basis on which the notice was held to be bad by the learned District Judge. We think that there is some substance in this contention. Since, however, we propose to remit the case back to the District Court for trial in due course, it will be open to the defendant to raise this issue at the trial.

We are therefore of the view that the learned District Judge has misdirected himself in law in answering the two issues against the plaintiff-appellant and we would answer both issues in the negative and remit the case for trial in due course. The plaintiff-appellant will be entitled to the costs of this appeal.

SILVA, J. - I agree.

Case remitted for trial in due course.