SULAIMAN
v.
ABOOBAKKAR

COURT OF APPEAL
WIJETUNGE, J. &
ANANDACOOMARASWAMY, J.
C.A. APPLICATION NO. 1159/90
D.C. COLOMBO NO. 6861/RE
05 FEBRUARY, 1991

Landlord and tenant – Rent and ejectment – Suit on ground of reasonable requirement of premises – Rent Act, section 22(2)(bb).

Held:

To sue the tenant on the ground of reasonable requirement, the landlord should not own a house or he should own no more than one house.

The expression landlord does not include his wife.

A landlord who is a life interest holder, or a tenant having a sub-tenant 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.

Although the relief claimed was stated to be under s. 22(2)(b) of the Rent Act, the action was really under s. 22(2)(bb). The maxim *falsa demonstratio non nocet* applies as the parties were not misled by what was only a clerical error.

Cases referred to:

1. *Arnolda v. Miriam Lawrence* C.A. Application No. 45/80 C.A. Minutes of 11.04.80.
2. *Miriam Lawrence v. Arnolda* (1981) 1 Sri LR 232.
3. *Mowlana v. Arunasalam* (1988) The Colombo Appellate Law Reports Vol. 11 – Pt. 11 page 159.
4. *Perera v. Jansz* (1949) 51 NLR 479.

APPLICATION in revision of the order of the District Court of Colombo.

S. Mahenthiran for defendant-petitioner.

A. A. M. Marleen with *Farook Thahir* and *A. G. Ameen* for plaintiff-respondent.

Cur adv vult.

14th March, 1991.
ANANDACOOMARASWAMY, J.

This is an application by way of revision to revise the judgment of the Learned District Judge of Colombo dated 11.10.1990, entering judgment for Plaintiff-Respondent (hereinafter referred to as Plaintiff).

The facts relevant to this application are briefly as follows: –

The Plaintiff instituted the action to eject the Defendant-Petitioner (hereinafter referred to as Defendant) from the premises No. 58A, Stace Road, Colombo 14. Notice to quit dated 18.05.1986 requesting the Defendant to quit and hand over vacant possession on or before 30.11.86 was issued.

At the trial it was admitted that there was a contract of tenancy for the residential premises in suit governed by the Rent Act and the rent exceeded Rs. 100/- per month. The receipt of the notice to quit was also admitted.

The Plaintiff alleged that she was entitled to a decree for ejectment on the grounds of reasonable requirement of the premises in suit for her own use and occupation. After trial, judgment was entered on 11.10.1990 in favour of the Plaintiff. The Defendant had appealed from this judgment to this Court. Immediately after this, the Plaintiff filed an application for writ pending appeal and before the said application was supported, the Defendant filed this application for revision and obtained a stay order from this Court staying all further proceedings in the District Court.

From the aforesaid facts, we find no reason why the Defendant had invoked the jurisdiction of this Court to set aside the judgment dated 11.10.1990 when an appeal from this judgment had been filed. We see no exceptional circumstances nor do we find any such circumstances averred in the said petition filed in this application by the Defendant. It appears that the Defendant feared the execution of the decree pending appeal, and perhaps this motivated him to file this application, because there is no provision in law for the District Court to order the stay of execution of decree pending appeal in those cases falling under Section 22(2)(bb) of the Rent Act.

On the merits of the application there are two matters in issue:–

1. In order to institute an action on the ground that the landlord requires the premises for occupation as a residence for himself or his family, whether he should be an owner of one residential premises.

2. Whether this action was instituted under Section 22(2)(b) or under Section 22(2)(bb) of the Rent Act No. 7 of 1972 as amended, as it is not clear from the notice to quit, pleadings and the evidence led in this case under which one of the categories the action falls.

On the first question what is required is that the "landlord is the owner of not more than one residential premises ...", which means that the landlord should own no house or not more than one residential premises. It is not essential that the landlord should own one house. The landlord who owns no house may fall into the category of a life interest holder or a tenant having a sub-tenant with the consent of the landlord.

This view finds support in the decision in the case of *Arnolda v. Miriam Lawrence* [1] where the Court of Appeal (Soza, J. with Atukorale, J. agreeing) expressed the view "It should be observed that the language used in this Subsection 1(a) is that the landlord should not be the owner of more than one residential premises. It may well happen that the landlord is himself a tenant who has let the premises to a sub-tenant, with the consent of his own landlord. Such a landlord though not the owner of the premises can sue under Section 22(1)(bb) if he owns no house or owns not more than one residential house. It must be remembered that the expression "landlord" necessarily does not mean owner of the premises. The expression is defined in the Rent Act as follows:–

> "Landlord, in relation to any premises, means the person for the time being entitled to receive the rent of such premises and includes any tenant who lets the premises or any part thereof to any sub-tenant".

"Hence all that is required is that the landlord should own no house or own not more than one residential premises. It is not for us to speculate on whether the actual intention of the Legislature was to make provision for a person who had let the only house he owns to get it back when it is required for his own residence. The language of the section as it stands makes good sense and we should interpret it as we find it".

On appeal in the very same case *Miriam Lawrence v. Arnolda* [2] the Supreme Court (Ismail, J. with Samarawickrema, J. and Wanasundera, J. agreeing) held *inter alia* "The landlord should be the owner of only a single house". Ismail, J. said "It will be noted under Subsection (1A) there had to be two essential pre-requisites before institution of any action or proceedings for ejectment of a tenant. These are, firstly, that the said landlord will not be entitled to institute any action or proceedings for ejectment of a tenant if he is the owner of more than one residential premises and ...". He also said "To invoke the provisions of Law No. 10 of 1977, it is an essential requisite that the person should be possessed of only one residential premises; and ...".

The Supreme Court did not decide whether a landlord could own no house to maintain the action.

But in the case of *Mowlana v. Arunasalam* [3] reported in (1988) where the Court of Appeal (Viknarajah, J. with S. B. Goonewardene, J. agreeing) held "That the word "landlord" in Section 22(1)(bb) and Section 22(7) means landlord and (or his spouse) and that as the Plaintiff's wife did not own more than one residential premises he was entitled to maintain the action". Viknarajah, J. in the course of the judgment said "The word "landlord" in Section 22(1A) and in Section 22(7) should be given an extended meaning to include spouse. That is the landlord and/or his spouse should not own more than one residential premises. This interpretation is in keeping with the object of the Amending Act No. 10 of 1977 because the Amending Act was brought to give relief to family units to enable them to recover the only house they had. If a family unit had more than one residential premises then the landlord cannot maintain the action. When I use the word family unit it means the landlord and/or spouse". In that

case the Court of Appeal granted relief to the Plaintiff who was not the owner of the premises in suit, but for different reasons. The Plaintiff's wife owned the premises in suit. As she did not own more than one residential premises, the Plaintiff was entitled to maintain the action. With respect we are unable to agree with this reason, although we are of opinion that the Plaintiff was entitled to maintain the action as he owned no house. As pointed out by Soza, J. in *Arnolda v. Miriam Lawrence* (*supra*) "It is not for us to speculate on whether the actual intention of the Legislature was to make provision for a person who had let the only house he owns to get it back when it is required for his own residence. The language of the Section as it stands makes good sense and we should interpret it as we find it". We find no material to support the view expressed by Viknarajah, J. when he gave an extended meaning to the word "Landlord" in Sections 22(1)(bb), 22(7) and 22(1A). On the contrary we find that the word "Landlord" is clearly distinguished from the words "Any member of the family of the Landlord".

Section 22(1)(bb) reads as follows: –

> "... reasonably required for occupation as a residence for the *landlord* or any *member of the family* of the landlord; ..."

Section 22(1A) reads "... *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 ...".

Section 22(7) reads "... (a) ... for occupation as a residence for the *landlord* or *any member of the family of the landlord* ...

(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...".

In the present case the Plaintiff is admittedly the owner of half share of the premises in suit and also has a non-notarially attested document whereby she became the absolute owner of the premises in suit. Quite apart from the validity of the non-material document, she is a co-owner of the premises in suit and therefore entitled to maintain this action.

We are therefore of opinion that a landlord who is a life-interest holder, or a tenant as against a sub-tenant or a co-owner is entitled to maintain an action for ejectment even though they may not own a house.

On the second question, the notice to quit did not refer under what Section on the Rent Act the Plaintiff was asking for the house. Only six months notice was given. The Plaintiff referred to the fact that the Plaintiff was a single house owner but the relief was claimed under Section 22 (2) (b) of the Rent Act. The issues and the evidence were on the basis of a single house owner. The Learned Counsel for the Petitioner (Defendant) submitted that one year's notice should have been given if the action was under Section 22(2) (b) and therefore the notice to quit was invalid, as only six months notice was given. In reply The Learned Counsel for the Respondent (Plaintiff) submitted that there was a clerical error in mentioning Section 22(2) (b) instead of Section 22(2) (bb) of the Rent Act and that the Defendant-Petitioner was not misled by this error, as both parties treated the case as falling under Section 22(2) (bb) of the Rent Act. He drew the attention of the Court to the written submissions filed on behalf of the Defendant, in the District Court. He also relied on the decision in the case of *Perera v. Jansz* [4] where the Former Supreme Court (Nagalingam, J,) held that "In the circumstances, the maxim *falsa demonstratio non nocet* applied and that the notice to quit was valid". In that case "A notice to quit given by a landlord to his tenant referred to the premises in question by an incorrect assessment number. The tenant, however, could have had no misgiving as regards the particular premises which he was asked to quit.

In the circumstances of the present case too we are of opinion that the Defendant-Petitioner was not misled by the aforesaid error.

For the foregoing reasons we dismiss the Defendant-Petitioner's application with costs.

WIJETUNGA, J. – *I agree.*

Application dismissed.