WIGNESWAREN

v.

THAMBIPILLAI

SUPREME COURT,
WANASUNDERA, J, RATWATTE, J.,
AND ABDUL CADER, J.
S.C.NO.47/82,
S.C.SPECIAL LEAVE TO APPEAL NO.69/82
APPLICATION NO. C.A.(L.A.)NO.60/81
D.C. MOUNT-LAVINIA, CASE NO. 667/RE.
October 10, 1983.

Landlord and Tenant-Action for ejectment of Tenant-Reasonable requirement - Section 22 (2)(b) of the Rent Act

No.7 of 1972 and Section 22 (2)(bb) of the Rent (Amendment) Act No. 55 of 1980 - Whether an amendment of plaint can be permitted unless an action was validly instituted - Sections 39,46(2), 55 and 147 of the Civil Procedure Code.

The Petitioner, (a Tamil Lady), filed action seeking to eject the defendant from the premises, on the ground of reasonable requirement under the Rent Act No.7 of 1972. During the trial, two further issues numbering 3 and 4 were brought forward by the defendant.

viz:

(3) Whether the plaintiff is subject to"Thesavalamai"

(4) If so, could the plaintiff maintain this case according to the manner in which it is filed?

In the meantime, the Rent Act was amended by Act No. 55 of 1980 and the petitioner sought to amend the plaint in terms of Section 22(2) (bb) of this Act, and her application was allowed by the District Judge. The defendant objected contending that the plaintiff being a Thesavalamai wife, could not validly institute legal actions without joining her husband, and no amendment can be permitted unless an action was validly instituted. The Court of Appeal decided that issues 3 and 4 be tried first to establish that the claim was validly instituted by the plaintiff and thereafter make an order for the amendment of the plaint.

Held -

There is no reason to disagree with the decision made by the District Judge as

(a) a decision on the issues of status viz : 3 and 4 will not decide the entire case if the plaintif succeeds; and

(b) This action being a tenancy case it is in the interest of justice to decide the entire case together, so as to avoid intermediate appeals.

Cases referred to

(1) Mango Nona vs. Manis Appu (1929) 31 N.L.R. 218

(2) Fernando vs. Fernando (1923) 25 N.L.R. 197

Appeal from an Order of the Court of Appeal

K.N. Choksy, S.A., with K. Kanag-Iswaren with Kumar Nadesan for the appellant.
H. L. de Silva, S.A., with S.Mahenthiran for the respondent.

Cur. adv. vult.

October 27, 1983.
ABDUL CADER, J.,

The appellant, a Tamil lady, filed action seeking to eject the defendant from the premises in suit on the ground of reasonable requirement in terms of Section 22 (2) (b) of the Rent Act No.7 of 1972.

On the date of trial, the following issues were framed :-

"(1)Are the premises relevant to this case required for reasonable occupation as a residence for the plaintiff and members of her family?

(2)If so,

(a) Is the plaintiff entitled to ask for a decree of ejectment of the defendant as prayed for in the plaint?

(b) What is the amount of damages which the plaintiff can recover from the defendant?"

The defendant did not frame any issues.

On 12th January, 1981, when the plaintiff was under cross-examination, and in consequence of certain statements made by her, the defendant raised further issues :-

"(3)Whether the plaintiff is subject to 'Thesavalamai'?

(4)If so, could the plaintiff maintain this case according to the manner in which it is filed ?"

The trial was postponed further for 12th May, 1981.

In the meantime, the Rent Act was amended by Act No.55 of 1980 which introduced a new ground of ejectment under Section 22 (2)(bb) and on 31st March, 1981, the petitioner sought to amend the plaint in terms of this Section. The defendant objected to this application, but the District Judge by his Order of 12th May, 1981, allowed the application.

The defendant appealed to the Court of Appeal against the Order of the learned District Judge contending that the plaintiff being a Thesavalamai wife, could not validly institute legal proceedings without joining her husband, and no amendment can be permitted unless an action was validly instituted and, therefore issues 3 and 4 as regards the status of the plaintiff should be decided before the amendment can be allowed. The relevant section (21(1) of the amending Act) reads

as follows:-

> "Where any action or proceedings instituted in any Court for the ejectment of a tenant from any premises under subsection (2)(b) of Section 22 of the principal enactment, is or are pending on the day immediately preceding the date of commencement of this Act, the landlord of such premises may, where he seeks to rely on any new ground specified in subsection (2)(bb) of Section 22 of the principal enactment, make application to the Court to amend the plaint and the court shall, notwithstanding the provisions of any other law, permit the landlord to amend the plaint in such action or proceedings and make such other orders as may be necessary, where the court is satisfied that the landlord has deposited with the Commissioner of National Housing a sum equivalent to five years' rent of such premises to be payable to the tenant thereof, and proceed to hear and determine the action or proceedings on the new ground adduced, and make order in accordance with section 22 of the principal enactment."

The Court of Appeal decided (a) that the word "instituted" in this Section means "validly instituted," and, therefore, the plaintiff should first establish that the claim was validly instituted by her without joining her husband and (2) if the plaintiff is permitted to amend the plaint as required in this Section before she established (a) above, defendants will be precluded from having the case tried on issues 3 and 4.

The Court of Appeal directed that issues 3 and 4 be tried first and thereafter (presumably if the plaintiff succeeds) make an order for the amendment of the plaint.

As regards the first, an action is instituted when a plaint is presented under Section 39 of the

C.P.C. The decisions in *Mango Nona vs. Manis Appu*(1) and *Fernando vs. Perera*(2) support this view. Unless it is rejected by Court in terms of Section 46(2) of C.P.C., summons will issue in terms of Section 55 C.P.C. on the basis that the action has been properly instituted. Counsel for the defendant cited decisions as regards minors which have to be distinguished as the fact of minority was disclosed in the plaints unlike in the case where the plaintiff did not admit that she was under coverture and, therefore, the Court had no material to consider that the plaint was irregular. This action remains validly instituted until the Court is satisfied on evidence that the plaintiff is a woman governed by the law of Thesavalamai.

In reply to plaintiff's contention that Section 147 C.P.C. requires only issues of law to be tried preliminarily and where the facts are in dispute, an order to have two separate trials cannot be made, Counsel for the defendant urged that the District Judge had a discretion to decide to hear certain issues preliminarily if they will go to the root of the case. There is no reason to disagree with the decision made by the District Judge as (a) a decision on the issue of status, viz: 3 and 4 will not decide the entire case if the plaintiff succeeds and (b) this action being a tenancy case it is in the interests of justice to decide the entire case together, so as to avoid intermediate appeals.

Under these circumstances, it is not necessary to interpret the meaning of Section 147 C.P.C.

The second of the reasons given by the Court of Appeal is clearly wrong, so much so that even Counsel for the defendant did not seek to support it. "The action or proceedings on the new ground adduced which the Court is called upon to hear and determine" necessarily presupposes the ordinary legal framework consisting of both procedural and substantive law which provide for the orderly

determination of disputes between parties.

Counsel for the defendant having admitted that the permission to amend the plaint will not preclude defendant's right to challenge the status of the plaintiff, the present exercise of the defendant is nothing other than an attempt to obtain further time in an action which has been already delayed from 12.5.81, thereby defeating the provisions of Section 22(2)(c).

The appeal is allowed. The order of the learned District Judge is restored. The amendment is accepted. After issues are framed consequent to the amendment trial will proceed on all issues together. The defendant-respondent will pay the plaintiff-appellant the costs of this Court and of the Court of Appeal.

In terms of Section 22(2)(c) this action should have been disposed of in its entirety over an year ago. The Registrar is directed to forward the record to the District Court within two weeks of this order and the District Judge is directed to hear and conclude proceedings within 4 months of the receipt of the record.

WANASUNDERA , J. I agree.

RATWATTE, J. I agree.

Appeal allowed.