APPUHAMY

v.

IRENE DIAS BANDARANAIKE

COURT OF APPEAL.
L. H. DE ALWIS, J. AND G. P. S. DE SILVA, J.
C.A. (S.C.) 185/76(F) – DISTRICT COURT COLOMBO 2009/R.E.
NOVEMBER 16, 1983.

Rent Act, No. 7 of 1972–Notice to quit–Excepted premises–Effect of interlocutory decree in partition action.

The plaintiff had instituted action as administratix de bonis non in the District Court for the ejectment of the defendant who was the tenant of the premises in suit and for the recovery of arrears of rent. The basis of the action was that the premises were "excepted premises" within the meaning of the Rent Act, No. 7 of 1972 and that the plaintiff had by writing dated 15th February, 1971 noticed the defendant to vacate the premises by 31st March, 1971. The District Judge entered judgment for the plaintiff. The defendant appealed to the Court of Appeal.

Held–

(i) An omission to specifically state that a notice to quit is given by the plaintiff in her capacity as administratrix is not material. A notice to quit should not be interpreted narrowly and restrictively but having regard to the conduct of the defendant and the wording of the notice.

(ii) Premises which are "excepted premises" within the meaning of the Rent Act, No. 7 of 1972 as assessed on the relevant date according to the annual value of the premises at that time, remain "excepted premises" despite a subsequent change in the annual value of the same premises.

(iii) Rights flowing from a monthly contract of tenancy are not affected by the entering of an interlocutory decree in a partition action.

Cases referred to

(1) *Sunrose Ltd. v. Gould [1962] 1 WLR 20.*
(2) *Perera v. Jansz (1949) 51 NLR 479.*

APPEAL from a judgment of the District Court of Colombo.

H. W. Jayewardene, Q.C. with *N. R. M. Daluwatte* for the defendant-appellant.
Jacolyn Seneviratne with *R. Weerakoon* and *D. S. Rupasinghe* for plaintiff-respondent.

Cur. adv. vult.

January 17, 1984.

G. P. S. DE SILVA, J.

The plaintiff instituted this action, as administratrix de bonis non of the estate of John de Silva, for the ejectment of the defendant who was the tenant of the premises in suit and for the recovery of arrears of rent. The basis of the action was that the premises were "excepted premises" within the meaning of the Rent Act No. 7 of 1972, and that the plaintiff had by writing, dated 15th February, 1971 noticed the defendant to vacate the premises by 31st March 1971. After trial, the District Judge entered judgment for the plaintiff and now the defendant has appealed.

Counsel for the defendant-appellant submitted that the plaintiff cannot have and maintain the action for the reason that :–

(*a*) the notice to quit is not valid in law ;

(*b*) the premises are not "excepted premises" within the meaning of the Rent Act, No. 7 of 1972 ;

(*c*) as a result of the interlocutory decree entered in the partition action No. 13802/P of the District Court of Colombo, the defendant has become the tenant of not only the plaintiff but also the other two co-owners.

As regards the invalidity of the notice to quit P1 Counsel contended that the notice was given by Mrs. Irene Dias Bandaranaike in her personal capacity and that there was no privity of contract between Mrs. Bandaranaike and the defendant. Counsel urged that a valid notice terminating the tenancy, could only be given by Mrs. Bandaranaike in her capacity as administratrix de bonis non of the estate of John de Silva.

It is true that P1 does not expressly state that it is given by Mrs. Bandaranaike in her representative capacity. It appears to me that P1 is equivocal. The plaintiff admittedly is an heir of the original landlord, the deceased John de Silva. It is clear from the averments in paragraph 3(*b*) of the Answer, that the defendant has paid rent to none other than the plaintiff both before and after the notice to quit. P1 itself begins with the words :–

"I am instructed by my client, Mrs. Irene Dias Bandaranaike, *your landlord in respect of the above premises,* to give you notice. . . . . "

Having regard to the conduct of the defendant and the wording of P1, it seems to me that the omission to specifically state that notice to quit is being given by Mrs. Bandaranaike in her capacity as administratrix is not material.

Counsel for the plaintiff-respondent cited the case of *Sunrose Ltd. v. Gould* (1) where Holroyd Pearce, L.J., made the observation that :-

". . . . at common law notices to quit have been benevolently construed ut magis valeant quam pereant. . . . "

There is also the decision of Nagalingam, J. in *Perera v. Jansz (2)* where the learned Judge applied the maxim falsa demonstratio non nocet to a notice to quit which referred to the premises by an incorrect assessment number. It seems to me wrong in principle to interpret P1 in an unduly narrow and restrictive manner as is contended for on behalf of the defendant-appellant. I accordingly hold that P1 is valid and that it effectively terminates the contract of tenancy.

I now turn to the submission that the premises in suit are not "excepted premises". Section 2(5) of the Rent Act, No. 7 of 1972, enacts that :

"the regulations in the Schedule to this Act shall have effect for the purpose of determining the premises which shall be excepted premises for the purposes of this Act . . . ."

Admittedly, the premises in question are business premises. In terms of regulation 3 in the Schedule to the Act, business premises would be excepted premises if the annual value as specified in the assessment made as business premises for the purposes of rates levied by the local authority "under any written law and in force *on the first day of January, 1968,* or, where the assessment of the annual value thereof as business premises is made *for the first time after the first day of January, 1968,* the annual value as specified *in such first assessment*", exceeds Rs. 6,000/-.

It is not in dispute that the annual value of the premises was assessed at Rs.7,500/- as on 1st January, 1968. It is also common ground that the annual value of the premises was reduced to Rs. 5,310/- as from 1st January, 1971. Counsel for the defendant-appellant contended that since the annual value was

reduced below Rs. 6,000/– with effect from 1st January, 1971, the premises are not excepted premises. Counsel urged that the identity of the premises as it stood on 1st January, 1971, was different from the premises that existed on 1st January, 1968.

It is common ground that since January 1968, a part of the roof (184 sq.ft.) had collapsed and the floor area was reduced. The Inspector of the Municipal Council stated in evidence, that this was the reason for the reduction in the annual value of the premises to Rs. 5,310/– in 1971. It seems to me that the fact that a part of the roof had collapsed and the floor area was reduced, does not mean that the identity of the premises assessed in 1971 is different from the identity of the premises assessed in 1968. As rightly submitted by Counsel for the plaintiff-respondent, the assessment in 1971 is in respect of the same premises as were assessed in 1968, but the annual value was reduced as the floor area available to the tenant was less than what was available in 1968. There was no physical sub-division of the premises ; nor was there an amalgamation with other premises nor a structural alteration which changed the identity of the unit which was assessed in January 1968. I, therefore, hold that the assessment in force on 1st January, 1968 prevails and that the premises are "excepted premises".

Counsel for the defendant-appellant finally submitted that once interlocutory decree was entered in the partition action, D.C. Colombo 13802/P, the defendant became a tenant of all the co-owners and the plaintiff could not maintain the action. This submission does not commend itself to me for the reason that the rights from a monthly contract of tenancy are not affected by the entering of an interlocutory decree in a partition action– Vide section 48(1) of the Partition Law, No. 21 of 1977, section 651(1) of the Administration of Justice (Amendment) Law, No. 25 of 1975 and section 48(1) of the Partition Act (Chapter 69).

In the result, the appeal fails, and is dismissed with costs.

L. H. DE ALWIS, J. – I agree.

Appeal dismissed with costs.