FONSEKA

v.

WIJETUNGE

SUPREME COURT.
SAMARAKOON, C.J., RANASINGHE, J. AND RODRIGO, J.
S.C. APPEAL No. 25/83.
S.C. SPECIAL LA/9/83.
C. A./L. A./7482 (S.C.).
C.A. (S.C) No. 811/75 (F).
D.C. COLOMBO No. 1969/ED.
JUNE 11, 1984.

Landlord and Tenant – Arrears of rent – Subletting – Wanton destruction and wilful damage – Section 12A (1) (d) of the Rent Restriction Act as amended by Act No. 12 of 1966.

The plaintiff sued his tenant the defendant for ejectment from shop premises No. 327, Galle Road on three grounds : arrears of rent, subletting a portion to one Albert Wijetunge and causing wanton destruction and wilful damage to the premises. The District Judge found in favour of the plaintiff on all three grounds but the Court of Appeal revised these findings and ordered plaintiff's action to be dismissed.

In appeal by the plaintiff to the Supreme Court he was permitted to proceed only on the grounds of subletting and causing wanton destruction and/or wilful damage to the premises.

The allegation of subletting to Albert who was defendant's brother was without substance, but on the allegation of damage the Additional District Judge had accepted the evidence of the architect Peiris and found that damage has been caused to the floor of the shop, kitchen floor and southern wall of the shop by acts of the defendant. The southern wall was damaged by nine angle-iron spikes driven into it to hold timber racks. As a result the wall had a crack penetrating to the other side causing dislocation of the parapet gutter and rain water to drain into the shop. The wall was thus rendered weak and liable to collapse.

Held–

The two grounds on which a landlord can eject his tenant under section 12A (1) (*d*) of the Rent Restriction Act are 'wanton destruction' and 'wilful damage'. The former means that there must be proof that the premises have suffered total or partial destruction. In other words they must be totally or partially destroyed. To be wanton, such destruction must be the result of carelessness for or indifference to the consequences or an unrestrained disregard of them. "Wilful damage" on the other hand means damage caused "intentionally" or "deliberately".

There was no evidence that the respondent was guilty of wanton destruction. On the other hand the damage to the southern wall caused by driving in nine angle-iron spikes was a deliberate act and the resulting weakening of the wall making it liable to collapse is a direct consequence of the act of driving in the spikes. The kitchen floor was cracked and pitted by the splitting of firewood on it and the floor of the shop was damaged by the planting of posts to support heavy rafters. Therefore the respondent is guilty of causing wilful damage to the premises within the meaning of section 12A (1) (*d*) of the Rent Restriction Act.

The damage must be serious and not trivial and what exactly is serious damage must be left to the discretion of the Judge. In the instant case the damage to the southern wall taken with the damage to the kitchen floor and to the floor of the shop must be regarded as serious and justifies ejectment.

Cases referred to :

(1) *Arumugam v. Carolis (1964) 67 NLR 84, 85, 86.*
(2) *Clarke v. Hoggins (1862) 11 C.B. (N.S) 551 – 52 ; 142 E.R. 912.*
(3) *Thangiah v. Yoonus (1972) 76 NLR 183.*
(4) *Pieris v. Pieris (1977) 79 (1) NLR 99.*

Appeal from judgment of the Court of Appeal.

P. Wimalachanthiran with *A. P. Niles* and *C. S. Hettihewa* for plaintiff-appellant.

A. Mampitiya with *Ifthikar Hassim* for defendant-respondent.

Cur. adv. vult.

June 20, 1984.

SAMARAKOON, C.J.

The Appellant instituted this action for the ejectment of the Respondent who was his tenant of premises No. 327, Galle Road, Mount Lavinia. The action was based on three grounds. They are :

(1) arrears of rent from October, 1969 to 30th April, 1970,

(2) that the Respondent had sublet a portion of his house to one Albert Wijetunge, and

(3) that the Defendant and/or persons residing in the said premises had caused wanton destruction and/or wilful damage to the premises.

The Additional District Judge held in favour of the Appellant on all three allegations and decree was entered accordingly. The Respondent appealed and the Court of Appeal reversed the findings of the Additional District Judge, and allowed the appeal of the Respondent, and ordered decree to be entered dismissing the Appellant's action. The Appellant has appealed on all three grounds with special leave of this Court.

At the hearing of this appeal we informed Counsel for the Appellant that he would be heard only on the allegation of subletting and the allegation that the Respondent has caused wanton destruction and/or wilful damage. I do not think there is any substance in the allegation that the premises had been sublet to Albert the brother of the Respondent and I therefore reject that ground of appeal.

In respect of the allegation of damage the Additional District Judge has accepted the evidence of Architect Pieris and found as a fact that –

(*a*) the floor of the shop had been cracked and holes dug to plant timber posts to support heavy rafters carrying plantain bunches,

(*b*) the kitchen floor cracked and pitted extensively by splitting firewood on the floor, and

(*c*) heavy angle-iron spikes had been driven into the Southern wall of the shop to hold timber racks. As a result the South-West corners of the wall had a crack penetrating to the outer side of the wall. This has caused the dislocation of the parapet gutter and the rain water to drain into the shop.

In his report (P3) architect Pieris stated that heavy hammering of nine angle-iron spikes into the wall had caused the crack and the draining of rain water into it had caused it to develop thereby rendering the wall weak and liable to collapse.

Section 12A (1) (*d*) of the Rent Restriction Act (Cap. 274) as amended by Act No. 12 of 1966 permits a landlord to sue the tenant in ejectment where –

"(*d*) wanton destruction or wilful damage to such premises has been caused by the tenant thereof or any other person at his instigation, or any other person residing in such premises."

Tambiah J. was inclined to follow the dictum of T. S. Fernando J. in *Arumugam v. Carolis* (1) where he sought to give a meaning to the word "wanton" and stated at pages 85 and 86 –

"The word *'wanton'* in the expression *'wanton damage'* in the context in which it appears in the Rent Restriction Act should be given its ordinary meaning. According to the Oxford English Dictionary, the word *'wanton'* (adjective) literally means 'Undisciplined'. One of the meanings of the word *'wanton'* (verb) is 'to deal carelessly or wastefully (with property, resources)'. I was referred by counsel to the meaning of the adverb *'wantonly'* as 'not having a reasonable cause' to be found in Stroud's Judicial Dictionary. I find that the reference is taken from a judgment of Willes J. in *Clarke v. Hoggins* (2). That learned judge was there interpreting a penal statute and he held that the mere fact of a man being instructed to deliver papers at a house of a third person was no answer to a complaint charging him with having 'wilfully and wantonly' disturbed the party and his family by very violently knocking and ringing at the door at an unreasonable hour in the night. I do not think the citation is of much assistance in interpreting the adjective *wanton* in the statute we are here concerned with. In the context in which we find it in the Rent Restriction Act, I think the word means 'purposeless', and the expression 'wanton damage' means purposeless damage of the kind which irresponsible school boys and soldiers of an invading army have been known to cause on certain occasions."

Wijayatilake, J. approved and adopted this statement and the meaning given to the words "wanton damage" when delivering his judgment in the case of *Thangiah v. Yoonus* (3). I do not find either decision helpful in deciding this matter. The phrase "wanton damage" does not appear in section 12A (1) (*d*) of the Act and it is therefore not a ground upon which a landlord can eject his tenant. The two grounds are – "wanton destruction" and "wilful damage". The former means that there must be proof that the premises have suffered total or partial destruction. In other words they must be totally or partially destroyed. To be wanton such destruction must be the result of carelessness for or "indifference to the consequences (or) an unrestrained disregard of them" (Stroud Vol. 5 Ed. 4 p. 2971). "Wilful damage" on the other hand means damage caused "intentionally" or "deliberately". Tambiah J., in following the dictum of Fernando J., was misled into the belief that purposeful damage was not wanton damage. There is no evidence in this case to hold that the Respondent has been guilty of wanton destruction. On the other hand the damage to the wall caused by driving in nine angle-iron spikes was a deliberate act and the resulting weakening of the wall making it liable to collapse is a direct consequence of the act of driving in the said spikes. I am therefore of the view that the Respondent has been guilty of causing wilful damage to the premises within the meaning of section 12A (1) (*d*) of the Rent Restriction Act (Cap. 274).

It is the duty of a tenant to take due care of the premises and to restore the premises to the landlord at the end of the tenancy in the same condition in which it was delivered to him reasonable wear and tear excepted. (Wille's Principles of South African Law 7th Edition p. 422). He must not inter alia cause damage to the premises (Voet 19.2.29). But this damage must be of a serious and not of a trival nature. (Voet 19.2.18). Vide also *Peiris v. Peiris.* (4) What exactly is serious damage is a matter that "ought to be left to the discretion of a prudent and cautious Judge". (Voet 19.2.18). The above are principles of the Common Law applicable to the relationship of landlord and tenant and I think they are apposite for the construction of the provisions of section 12A (1) (*c*) of the Rent Restriction Act (Cap. 274). The damage caused to the Southern wall by driving angle-iron spikes is so much that it is in danger of collapse. This is

serious damage and it will entail considerable expense to the landlord to restore it. This damage taken with the damage to the kitchen floor and the floor of the shop would also, in my opinion, justify an order in ejectment. I therefore allow the appeal and direct that a decree in ejectment and damages as prayed for in the plaint be entered in favour of the Appellant. He will be entitled to costs here and in the Court of Appeal.

RANASINGHE, J. – I agree.

RODRIGO, J. – I agree.

Appeal allowed.