WEERASENA
V.
A.D.R. PERERA

SUPREME COURT
BANDARANAYAKE , J.
FERNANDO, J. AND
DHEERARATNE J.
S.C. APPEAL 42/90; CA 281/88 (F) D.C. MOUNT LAVINIA 1351/RE.
JANUARY 16 AND 22, 1991.

Rent and Ejectment - One contract of letting - Excepted premises - Sub-division for rating purposes - Whether sub-divided portion falls within Rent Act.

The Plaintiff let premises No. 97, Stanley Tillakeratne Mawatha, Nugegoda, to the Defendant in 1972, which premises were excepted premises. The rear portion of the premises, a store room was later separately assessed as 97B. The Plaintiff's action for ejectment failed as premises No. 97B was alleged to be covered by the Rent Act and there being no valid termination. The Court of Appeal reversed the judgment and directed ejectment from the full premises.

Held:

(i) Where there has been one contract of letting, the mere assessment and sub-division of a part of that premises does not give rise to a separate letting or give birth to a new premises, when the sub-division is an adjunct of the former.

(ii) The entity of protection is not the premises, but the contract - *Imbuldeniya* V. *de Silva* (4) applied.

(iii) Applying the test in *Ansar* v. *Hussein* (8), in the absence of any physical alteration to the premises 97B it cannot be said that a new premises has come into existence.

Cases referred to:

(1) *Rohan Pieris* v. *Edirisinghe* (1986) Sri L.R. 147.
(2) *Plate* v.*Ceylon Theatres Ltd.* 75 N.L.R. 128.
(3) *Hemachandra* v. *Hinni Appuhamy* (1982) 2 Sri L.R. 433.
(4) *Imbuldeniya* v. *de Silva* (1987) 1 Sri L.R. 367.
(5) *Chettinad Corp. Ltd.* v. *Gamage* 62 NLR 86.
(6) *Sally Mohamed* v. *Seyed* 64 N.L..R. 486.
(7) *Premadasa* v. *Attapattu* 71 N.L.R. 62.
(8) *Ansar* v. *Hussein* (1986) CALR vol. 1 365.
(9) *Hewavitharana* v. *Rathnapala* (1988) 1 Sri L.R. 240.

APPEAL from judgment of the Court of Appeal

A.K. Premadasa, PC with *T.B. Dillimuni* and *G.H.S. Suraweera* for the defendant - appellant.

P.A.D. Samarasekera, PC with *D.J.C. Nillinduwa* for plaintiff - respondent

Cur. adv. vult

24 May 1991

DHEERARATNE, J.

This appeal relates to a novel problem which has cropped up in the field of landlord and tenant calling for a reconciliation of the common law with the statutory provisions of the Rent Act No. 7 of 1972.

The plaintiff-respondent let to the defendant-appellant premises bearing Assessment No. 97A, Stanley Tillekeratne Mawatha, Nugegoda situated within the Urban Council limits of Kotte, an area in which the Rent Act is in operation. The tenancy commenced in June 1972, and the premises, being business premises assessed for the first time at an annual value of over Rs. 2000/- was admittedly excepted premises within the meaning of Regulation 3 of the Schedule to the Rent Act. The tenant ran a drapery stores in the premises. After the tenant went into occupation in July 1972 a rear room of premises No. 97A, designed to be a storeroom, was separately assessed as premises No. 97B at an annual value of Rs. 500/- and was then described as a tailor's shop. The separate assessment evoked no protest from the landlord and the legal machinery available to him to challenge this separate assessment was not set in motion. The remaining and larger portion of the premises continued to bear assessment No. 97A, carrying an annual value which still exceeded Rs. 2000/-. Meanwhile the parties continued to treat the tenancy as one, the tenant paying a single monthly rent and receiving therefor one receipt. Disputes between the landlord and tenant arose when the tenant fell into arrears of rent from 1.12.1979 and by letter dated 5.08.1980, the landlord gave the tenant notice of termination of the tenancy, describing the premises as "97A (presently 97A and 97B)" and requiring the tenant to quit and deliver possession of the premises on or before 30th September 1980. The notice to quite was followed by this action filed on 5.02.1981 for ejectment of the tenant on the basis that the premises was excepted premises.

The learned trial judge came to the finding that premises No. 97A was excepted premises whereas 97B was not, and proceeded to dismiss the plaintiff's action on the ground that there was no valid termination of the tenancy in respect of the premises in suit. One can find no rational explanation as to why at least in respect of premises 97A the notice was found to be ineffective, and why an order of ejectment should not have been issued against the tenant in respect of that premises. See *Roshan Peiris v. Edirisinghe* [1]. The Court of Appeal reversed the findings

of the original Court and entered Judgment for the plaintiff-respondent as prayed for primarily on the basis that both the landlord and the tenant had acted on the footing that there was one unit of letting and one tenancy.

Submissions made on behalf of the defendant-appellant in order to persuade us to interfere with the Judgment of the Court of Appeal were solely directed to avoid him being ejected from the separately assessed premises No. 97B. The principal submission made was that the separate assessment of 97B has given birth to new premises which instantly attracts the provisions of the Rent Act, and that where the statute steps in the contract must yield to the statute. On the other hand, it is contended for the plaintiff-respondent that premises No. 97B is not the subject matter of a separate letting and since it is the entire business premises that is the subject matter of the tenancy, the whole premises falls outside the Rent Act as excepted premises.

If the submission of learned Counsel for the defendant-appellant is correct, the separate assessment of 97B, from the point of time of such assessment has the effect of breaking one tenancy into two, the common law continuing to govern the contractual relationship of landlord and tenant in respect of the excepted premises No. 97A and the statute governing the relationship in respect of the premises No. 97B which is an adjunct of the former.

Reliance was placed on behalf of the defendant-appellant on certain observations made by Samarawickrame, J. in *Plate* v. *Ceylon Theatres Ltd* [(2)] which read:-

> "The scheme of the Act suggests that it was intended that the criterion for deciding whether premises were excepted premises was to be the amount of the annual value assessed by the local authority. Once a premises was excepted premises on the application of that test there is no support to be found in the Act for the position that a part of this premises could be premises to which the Rent Act applies unless that part was separately assessed."

And again,

> "Learned Counsel for the defendant-appellants submitted that for the purpose of the Act it was the unit of letting that should be the premises. The definition of residential and business premises show

> that the nature of the occupation is relevant and is to be taken into account. There is nothing in the Act to suggest that the unit of letting is to be the premises. On the other hand the reference in section 7 and 9 to the premises let in parts or in part suggests otherwise."

The problem in the *Plate* case (supra) was whether a tenant of an unassessed part of an excepted premises was entitled to claim the protection of the Rent Restriction Act when he was sued in ejectment. The argument put forward on his behalf was that because that part of the excepted premises he was occupying as a tenant carried no annual value, it was not excepted premises and that such premises being situated in an area to which the Rent Restriction Act applied, he was protected by the provisions of that Act. Cutting out a portion for separate assessment from one excepted premises, the whole of which is covered by one tenancy, was no doubt furthest from the mind of Samarawickreme, J and his observations must be understood as restricted to a new assessment being given to a portion of an excepted premises, which portion is already the subject matter of a separate letting. That exactly is the situation which arose in *Hemachandra* v. *Hinni Appuhamy* [3].

Learned Counsel for the defendant-appellant drew our attention to Ryde on Rating (11th Edition) page 34, in which recognized ingredients of rateable occupation are explained as follows:-

> "First, there must be actual occupation,
> or possession;
> Secondly, it must be exclusive for the particular purpose of possessor;
> Thirdly, the possession must be of some value or benefit for the possessor; and
> Fourthly, the possession must not be for too transient a period."

The submission made was that the rating authorities applied those criteria in making a separate assessment for the purpose of rating which instantly gave birth to new premises. The evidence in this case reveals that the separate assessment was made in consequence of the defendant-appellant who ran a drapery stores converting the Storeroom of the rented premises to his tailoring unit. If the second ingredient plays such a dominant part in the assessment of any particular portion of rented premises as separate premises, we would perhaps have to sympathize with a landlord who lets an excepted business premises to a tenant who thereafter decides to run a department store, thus paving the way for

several rent controlled premises to spring up in place of one excepted premises.

The cornerstone of the argument for the defendant-appellant is section 2(4) of the Rent Act which enacts that so long as that Act is in operation in any area, the provisions of that Act shall apply to all premises in that area, other than the 5 categories of premises mentioned therein. Thus assuming that separate assessment of premises No. 97B *per se* gave birth to new premises, it is submitted on behalf of the defendant-appellant, that the provisions of the Rent Act instantly become applicable. It is contended that the Rent Act applies to premises not to persons, and that it operates in rem and not in personam.

If the above submission is correct the Rent Act will also apply to premises occupied by owners, licensees and untenanted premises. It seems to me that it is the relationship of landlord and tenant in respect of premises falling within the Rent Act that attracts its provisions. The preamble to the Rent Act No. 7 of 1972 reads:

"an Act to amend and consolidate the law relating to Rent Restriction", and the preamble to its legislative ancestor the Rent Restriction Ordinance No. 60 of 1942 reads, "an Ordinance to restrict the increase of rent and to provide for matters incidental to such restrictions." So it is the restriction of rent which is the principal purpose of the Act and where there is no incidence of rent, the provisions of the Act have no application. The contention that the entity of protection granted by the Rent Act No. 7 of 1972 is the premises and not the contract of tenancy, was rejected in the Divisional Bench case of *Imbuldeniya* v. *de Silva* [4] and learned Counsel for the defendant-appellant has not been able to persuade us to take a different view. Therefore, I am unable to hold that as long as one tenancy subsists for the whole premises the mere assessment of a part of that premises which is not the subject matter of a separate letting, gives birth to new premises, especially when the evidence discloses that the latter 'premises' is an adjunct of the former.

The problem may also be approached differently by examining the application of regulation No. 3 of the schedule to the Rent Act to premises No. 97B. It may be asked whether the assessment of the annual value in force in January 1968 or the assessment made in July 1972 is

applicable. On this question, it appears to me that the decided authorities have taken three different approaches. The first, was to give prominance to the original assessment, paying little attention to the transformation the premises has undergone subsequently attracting separate new assessments. This approach is reflected in the cases of *Chettinad Corporation Ltd.* v. *Gamage* [5] and *Sally Mohamed* v. *Seyed* [6]. The second was to grant almost absolute sanctity to a new assessment made by rating authorities and to treat that as giving birth to new premises in place of the old, as reflected in the case of *Premadasa* v. *Atapattu* [7]. The third, is that reflected in the judgment of Wanasundera, J in *Ansar* v. *Hussain* [8] a *via media,* through which the Court will not only look at the mere fact of a separate assessment, but also, at the extent and significance of the change involved and the impact of that change on the valuation and assessment. This last approach, commends itself to me as a safeguard both against capricious assessments made by rating authorities affecting rights of parties to the letting and also against possible manipulations of the assessments by interested parties with intent to give undue advantages either to landlords or to tenants. (see for example *Hewavitharana* v. *Rathnapala* [9].)

"Premises" is defined in s.48 to mean "any building or part of a building together with the land appertaining thereto". A room in a building, such as a bedroom, a kitchen or a storeroom is "part of a building", but obviously, in the context of the Act, would not be "premises" unless it is physically a distinct part, capable of separate possession. The *Plate* case (supra) establishes that if such a part of a building separately let, is not separately assessed it would be "excepted premises" if the entire building is "excepted premises" (and vice versa). The appellant's contention requires that definition to be read as if *either* a building (or a part) would fall within it only if assessed *or* a part of a building would automatically come within it if separately assessed. This cannot be accepted as the definition refers to the building (and its parts) as physical entities, and makes no reference to how it is treated for rating purposes. Prior to the separate assessment of Nos. 97A and 97B when regulation 3 was applied, No. 97A was "business premises"; it's annual value as specified in 1968 assessment exceeded the specified amount; therefore No. 97A was "excepted premises". The second limb of regulation 3 refers to a subsequent "assessment of the annual value *thereof,* "meaning the "business premises" referred to in the first line of regulation 3. Unless premises No. 97A by reason of some significant physical change, had become two distinct premises, the use of the word "thereof" indicates

that the subsequent assessment would have no effect. Hence regulation 3 covers primarily cases where premises are originally assessed as "residential" but in or after 1969 are assessed as "business". It also covers cases where premises initially assessed as "business" are thereafter physically converted into two or more distinct premises, and assessed as such for the first time after 1968. The second limb of regulation 3 has no application to a case such as the present where there was no physical conversion into two or more premises, but only a notional conversion for the purpose of assessing and recovering rates.

Considering the absence of any physical alterations whatsoever made to premises No. 97B, I am unable to hold that new premises have come into existence. The original assessment in force as at January 1968 will continue to govern the entire premises. This situation no doubt will change if the separately assessed premises becomes the subject matter of a separate letting.

For the above reasons the appeal is dismissed and the judgment of the Court of Appeal is affirmed. The plaintiff-respondent will be entitled to costs of this appeal and to costs in all Courts below.

BANDARANAYAKE, J. - I agree

FERNANDO, J. - I agree

Appeal dismissed