SAMSUDEEN

v.

FAROOK

COURT OF APPEAL.
T. D. G. DE ALWIS, J. AND DHEERARATNE, J.
C. A. No. 116/76 (F).
D. C. KURUNEGALA 4337/L.
JUNE 11, 12, 13 AND 14, 1985.

Landlord and tenant – Partnership – Can partnership hold tenancy? – Attornment.

A drapery business was being conducted in the premises in suit at the time relevant to the suit by a partnership under the name Abuthahir and Son. There were several changes in the members of the partnership and eventually the defendant Samsudeen was the sole partner. The ownership of the premises changed in 1971 and then Sahid Hadjiar the new owner called upon Abuthahir and Son to attorn to him. At this time one Shah Johan Beebee and Samsudeen were the partners of Abuthahir and Son. Samsudeen who ran the business sent the rents by Money Orders. Some Money Orders were returned but not all. Sahid Hadjiar gifted the premises to his children the plaintiffs in 1973. Later Sahid Hadjiar died and his son the 1st plaintiff returned the remaining Money Orders.

Held –

Although a partnership cannot in law be the tenant of premises the notice to attorn was for no other than those who were partners of the firm Abuthahir and Son at the time. The partnership name is only a conventional mode of designating the persons composing it. Therefore the notice to Abuthahir and Son to attorn is a notice to the partners of the firm at the time.

Cases referred to:

(1) *Perera v. Liyanagama–(1956) 58 N.L.R. 454.*

(2) *Shanmugasunderam v. Mohamed–[1984] 2 S.L.R. 270.*

(3) *Wray v. Wray–[1905] 2 Ch. 349.*

APPEAL from judgment of the District Court of Colombo.

Dr. H. W. Jayewardene, Q.C. with *M. S. M. Nazeem, P.C.* and *Miss T. Keenawinna* for appellant.

Nimal Senanayake, P.C. with *M. Gazzali* and *Mrs. A. B. Dissanayake* for 1–6 plaintiffs-appellants.

Faiz Mustapha with *M. H. M. Ashroff* for 9-10 plaintiffs-respondents.

Cur. adv. vult.

February 12, 1986.

T. D. G. DE ALWIS, J.

The plaintiff instituted this action against the defendant for a declaration of title to the premises bearing assessment No. 89, Mahaweediya, Kurunegala, for the ejectment of the defendant therefrom and for damages. The defendant claimed that he was the tenant of the premises. Judgment was given for the plaintiff and the defendant has appealed.

These premises were at one time owned by Saibu Hadjiar Seyed Sahabdeen, who on deed No. 7958 dated 04.10.1971 (P4) sold the same to Mohammed Sahid Hadjiar, who by deed No. 113 dated 06.03.1973 (P5) gifted the same to his children the plaintiffs. In these premises a drapery business was carried on from as far back as the year 1942 known as K. M. S. Abuthahir and Brother, the partners being K. M. S. Abuthahir and his brother Katu Bawa. In 1948 Katu Bawa retired from the firm, and in his place Abuthahir's son Abdul Razaak became a partner, and the name of the business was changed to K. M. S. Abuthahir and Son. According to the evidence Abuthahir and his son Abdul Razaak were the tenants of Sahabdeen in respect of these premises.

Abuthahir and Abdul Razaak were Indians, and in the year 1966 Abdul Razaak was deported to India and he never came back thereafter. In early 1969 Abuthahir himself went to India and he died there on 29.05.1969. After Abdul Razaak was deported Abuthahir took his son-in-law Gulam Mohideen as partner. After the death of

Abuthahir in 1969 Gulam Mohideen became the sole partner, and after his death his widow Shah Jehan Beebee became sole partner. Thereafter on 11.12.1970 Shah Jehan Beebee admitted Samsudeen the defendant as a partner. On 27.06.1973 Shah Jehan Beebee gifted all her rights in the business to the defendant. The defendant first became associated with the firm of Abuthahir and Son in the year 1964 as a salesman. From there he worked his way up to be the manager of the firm, and then to be a partner in 1970, and sole partner in 1973.

When by deed (P4) Sahabdeen sold these premises to Sahid Hadjiar in 1971 the defendant was a partner of the firm, and the other partner Shah Jehan Beebee being away in India the business was carried on by the defendant alone. After the execution of deed (P4) Mr. M. O. M. Thahir, attorney-at-law who attested deed (P4) wrote letter (P6) dated 07.10.71 addressed to Abuthahir and Son informing them that Sahabdeen had sold the premises to A. R. M. Sahid Hadjiar and asking them to attorn to him and pay future rents to him.

On receipt of letter (P6) the defendant wrote letter (D1) dated 13.10.1971 to Sahid Hadjiar acknowledging letter (P6) and enclosing rent for October 1971. He has signed this letter as partner of Abuthahir and Son. Thereafter the defendant sent rents regularly for the months November and December 1971, and for the months January and February 1972. The letters sending these rents have been signed by the defendant as partner of Abuthahir and Son. The letter dated 10.03.1972 (D2) was not accepted and therefore returned to the defendant. But however the defendant continued to send rent to Sahid Hadjiar by money order till August 1972. On 19.08.1972 Sahid Hadjiar wrote letter (D6) to Abuthahir and Son stating that although by letter (P6) they were requested to attorn to him and pay future rents to him no rent has been paid at all. By the time he wrote letter (D6) Sahid Hadjiar had returned five of the money orders sent by the defendant. These money orders were the rents for March and April 1972 and June to August 1972. The rent for the six months October to February 1972 and May 1972 were not returned. There is no correspondence produced as to why the rents for the five months March and April 1972 and June to August 1972 were returned. To letter (D6) the defendant replied by letter (D5) dated 22.08.1972 also signed by him as partner of Abuthahir and Son giving a list of the money orders sent, those accepted and those

returned. With this letter the money orders that had been returned were sent back to Sahid Hadjiar. Sahid Hadjiar died on 11.03.1973. Till that time he had not cashed any of the money orders, nor had he returned any of them to the defendant. On 27.08.1973 Sahid Hadjiar's son Farook the 1st plaintiff returned eight of the money orders to the defendant, and on 21 09.1973 Farook returned the balance three money orders to the defendant.

In the District Court the main contention on behalf of the defendant was that the firm of Abuthahir and Son was the tenant, and the defendant being a partner of the firm had succeeded to the tenancy The learned District Judge held that a partnership could not in law be the tenant of premises. This is undoubtedly a correct statement of the law. Vide—*Perera v. Liyanagama* (1) and *Shanmugasunderam v. Mohammed* (2). He further held that the tenancy had been with Abuthahir and Razaak, and that there was no privity of contract between the landlord and the defendant.

It was submitted by learned Queen's Counsel for the appellant that on the facts of this case after Sahid Hadjiar purchased these premises in 1971, a new contract of tenancy was created between Sahid Hadjiar and the partners of the firm of Abuthahir and Son at the time of the purchase. As stated earlier Razaak was deported to India in 1966 and he did not come back thereafter. Abuthahir died in India in 1969. The question arises as to whom the notice to attorn (P6) was meant. Could it have been the intention of Sahid Hadjiar that this notice to attorn (P6) was meant to reach either Abuthahir or his son Razaak? Did he even know of an Abuthahir or a Razaak at all, and if so what could have been the source of his knowledge of them? In any of his correspondence with the defendant he has nowhere mentioned that his tenant was either Abuthahir or Razaak. The premises in question are situated at Kurunegala, and Sahid Hadjiar was not from Kurunegala; he was a resident of Minuwangoda. His vendor Sahabdeen was a resident of Kurunegala and he is the best person who could have given information to Sahid Hadjiar as to who were in occupation of the premises. Sahabdeen would have surely known that Abuthahir was no more and that Razaak had been deported to India as far back as 1966. He could not have told Sahid Hadjiar that the present tenant was either Abuthahir or Razaak. There is no evidence that Sahid Hadjiar even attempted to find out who the occupants of the premises were. He could easily have had the business registration searched, the necessary documents being in Kurunegala itself. He

could have got the necessary information from Mr. Thahir the notary who acted for him in regard to this purchase. Mr. Thahir knew quite a lot about the firm of Abuthahir and Son and its affairs. Mr. Thahir's evidence is that Sahid Hadjiar's purpose in purchasing this property was only to obtain the rents. Then to whom could the notice to attorn (P6) have been meant. I think that it was meant for no other than those who were partners of the firm at that time.

What then are the legal consequences that follow? Lindley in his treatise on Partnership (15th edition page 36 et seq) states as follows:

> ".....the name under which a firm carries on business is in point of law a conventional name applicable only to the persons who, on each particular occasion when the name is used, are members of the firm.....as the name of a firm is only a conventional mode of designating the persons composing it; any variance among these persons is productive of a new signification of the name.....Thus in *Wray v. Wray* (3) it was held that a conveyance of freeholds to 'William Wray in fee simple' passed the legal estate in fee to the persons who were at the date of the conveyance members of the firm trading under that name.....If therefore a legacy is left to a firm the legacy is payable, unless otherwise expressed, to those who compose the firm at the date of the will."

Likewise in this case when (P6) the notice to attorn was addressed to Abuthahir and Son it was an offer of the tenancy to those who were the partners of the firm at that time. The defendant one of the partners by his letter (P10) of 13.10.71 accepted this offer and sent Sahid Hadjiar the rent for October 1971. Thereby, in my view, a contract of tenancy was created between Sahid Hadjiar and the defendant as a partner of the firm of Abuthahir and Son The judgment of the learned District Judge is therefore set aside, and the plaintiff's action is dismissed. The appeal is allowed, but without costs.

DHEERARATNE, J.—I agree.

Appeal allowed

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DHEERARATNE, J. – I agree.

Appeal allowed