MUSTHAPA THAMBY LEBBE

v.

RUWANPATHIRANA

SUPREME COURT.
RANASINGHE C.J., TAMBIAH J. AND SENEVIRATNE, J.
S.C. APPEAL No. 17/86.
CA/LA (SC) No. 3/86.
C.A. APPEAL No. 95/81(F).
D. C. GAMPOLA 709/L.
MARCH 07, 1988.

Landlord and tenant–Nuisance and deterioration of premises by acts of neglect or default of the tenant–Demolition of bucket latrine and replacement by construction of a water-sealed latrine–Soakage pit built partly on rented premises and partly on premises of adjoining owner–S. 22(1)(d) of Rent Act No. 7 of 1972.

To obtain ejectment on the ground of deterioration of the premises as contemplated in s. 22(1)(d) of the Rent Act the acts complained of must cause some damage to the premises let and thereby worsen its condition. Demolition of the bucket latrine and construction of a water-sealed latrine cannot be said to cause a deterioration of the condition of the premises let. What the tenant did was to effect a useful improvement which would serve a useful purpose and this rendered the property more valuable.

Cases referred to:

1. *W. A. S. de Silva v. L. Gooneratne Modern Law Reports Vol. 1 p. 6.*
2. *De Alwis v. Wijewardena (1958) 59 NLR 36.*
3. *De Zoysa v. De Silva (1972) 73 NLR 576.*

APPEAL from judgment of the Court of Appeal reported in [1986] 1 Sri LR 201.

P. A. D. Samarasekera P.C. with *Faisz Musthapa P.C.* and *G. L. Geethananda* for plaintiff-appellant–appellant.

Ikram Mohamed with *W. Rajapakse* and *Miss. Janaki de Silva* for defendant-respondent–respondent.

Cur. adv. vult.

March 18, 1988.

TAMBIAH, J.

The plaintiff-appellant sought to eject the defendant-respondent from premises bearing Assessment No. 3, Hill Road, Nawalapitiya, on the two grounds set out in s. 22(1)(*d*) of the Rent Act, No. 7 of 1972, viz, that the tenant had been guilty of conduct which is a nuisance to the adjoining occupier and that the condition of the premises has, in the opinion of the Court, deteriorated owing to acts committed by or to the neglect or default of the tenant.

It was common ground that a bucket latrine was part of the rented premises and that the defendant-respondent had, without the prior approval of the plaintiff-appellant, demolished the bucket latrine and constructed in its place a water-sealed latrine at his own expense. The soakage pit of the new latrine was constructed partly on the rented premises and partly on the premises of the adjoining owner.

The learned trial Judge held against the plaintiff-appellant and dismissed his action, and the Court of Appeal too affirmed the findings of the learned trial Judge and dismissed the appeal but set aside the compensation awarded to the defendant-respondent for constructing the new latrine.

At the hearing before us, learned President's Counsel for the plaintiff-appellant confined his submissions to the second ground of ejectment only.

Learned President's Counsel submitted to us that the tenant took the house on rent with the bucket latrine, and cited a passage from Wille's "Landlord and Tenant in South Africa", (4th Edn. p. 228)–

"It is the duty of the tenant to take proper care of the leased property, to use it for the purpose for which it was let and for no

other purpose, and, on the termination of the lease, to restore the property to the landlord in the same condition in which it was delivered to him, reasonable wear and tear excepted. It follows that the tenant must not abandon or neglect the property, or misuse, injure or alter it in any way, and *a fortiori* he may not destroy it, or appropriate the substance of the property."

Learned President's Counsel invited us to view this ground set out in s. 22(1)(*d*) in the light of the above common law obligation of the lessee, and viewed in that light, he submitted, that if a tenant demolishes any part of the rented premises without the permission of the landlord, the very act of demolition tantamounted to deterioration of the premises within the meaning of s. 22(1)(*d*) of the Rent Act of 1972.

Learned President's Counsel further submitted that if such interpretation was not given, the tenant would have a free hand, without the permission of the landlord, to replace the cement floor by a teak floor, the brick walls by marble walls and even to demolish the entire structure and build a new modern luxury house, and so on.

As regards this last submission, these are extreme hypothetical situations that do not call for a decision in this case. For the moment, I need only say this. If such a generous tenant could be found, the landlord must consider himself very fortunate and in the words of Shakespeare, I would advise the landlord to "grapple him to his soul with hoops of steel".

In *W. A. S. de Silva v. L. Gooneratne,* (1) the landlord sought to eject his tenant on the ground that "wilful damage" was caused to the premises by the tenant within the meaning of s. 12A(1)(*d*) of the Rent Act as amended by Acts Nos. 10 of 1961 and 12 of 1966. The tenant had removed the round tiles from the roof of the premises and replaced them with galvanised sheets.

Learned Counsel for the landlord in that case submitted, as in this case, that the landlord was entitled to have his roof in the condition in which it was let out to the tenant; that the very act of removing the round tiles without the permission of the landlord constituted "wilful damage" within the meaning of the section and the fact that later the roof was covered with galvanised sheets was immaterial.

Rejecting this submission Udalagama, J. went on to consider whether the act complained of constituted "wilful damage" to the premises let. Udalagama, J. said (p. 9)–

> "The argument of Counsel for the plaintiff-appellant that the removal of the tiles without the permission of the landlord, constituted "wilful damage" and the fact that later the roof was covered with galvanized sheets, was immaterial, does not in our view stand to reason. If for example, instead of replacing the tiles with galvanized sheets, some of the damaged tiles were removed and replaced with good tiles of similar shape and quality, could it be said that the removal of the damaged tiles constituted "wilful damage"?, Or where a damaged door is removed and a new one is put in its place or the same door is repaired and put back, could it be said that the act of removal of the door constituted "wilful damage" to the premises? The only penalty that would attach in such an event is that the tenant will not be able to recover the cost of the repairs, if no notice had been given to the plaintiff, before the repairs were effected..... The act complained of has not changed the nature or character of the property let in any manner. If at all in our view, it has enhanced the purpose for which it was let."

In *De Alwis v. Wijewardena* (2), the ejectment of the tenant was sought under the proviso (d) to s. 13(1) of the Rent Act of 1948–a ground identical with that in this case. The evidence disclosed that substantial damage was caused to the floor upstairs due to the acts and neglect of the tenant and of persons lodging with her. The damage was the result of a "Jaffna hearth" being used at that place. The wooden floor was scorched over an area of about 2'×2' and was burnt right through in one place in this area. Gunasekera, J. said (p. 39)–

> "There was permanent and substantial change for the worse in the condition of the floor boards. In the learned Commissioner's opinon, this change amounted to a deterioration of the condition of the dwelling house. I am unable to say that there was no basis for that view".

In *De Zoysa v. De Silva* (3), an action for ejectment on the same ground, the tenant deliberately demolished the boundary wall of the premises without the landlord's consent. Thamotheram, J. said:

"There is evidence that in addition to the damage to the boundary wall, there was some damage to the premises by the demolition, such as the exposure of a drain pipe, erosion of the earth and the weakening of the portion of the boundary wall which also served as a retention wall. There is no doubt that a boundary wall is part of the premises. I cannot say that the learned Commissioner was wrong in holding on the above facts that there had been deterioration (made worse) of the premises by the demolition of the boundary wall."

These last two cases, therefore, establish that to successfully maintain an action for ejectment on this ground, the acts complained of must cause some damage to the premises let and thereby worsen its condition.

The Rent Laws were intended to benefit the tenant and to put the tenant in a much more secure position in regard to his tenancy. The landlord's common law rights have now been curtailed. The tenancy cannot now be determined by the landlord merely giving a proper notice to quit. Ejectment can only be sought on grounds specified in the statute.

The short point we have to decide in this case is whether the demolition of the bucket-latrine and the construction of a water-sealed latrine by the defendant-respondent caused a deterioration of the condition of the premises let.

Under the Rent Act of 1972, there is provision for an increase of rent where the landlord has incurred expenditure "on the improvement or structural alteration of the premises" (s. 5(b)). There is a similar provision in the corresponding English Statute. Dealing with the matter, Megarry in his "Rent Acts" (10th Edn., Vol. 1, p. 327) cites the following as "Improvements". The term 'improvements' has been held to include matters such as replacing a detached earth closet by a built-on water closet, substituting an efficient sanitary system for an antiquated system etc."

"A necessary improvement is one which is necessary for the protection or preservation of the leased property. The other forms of improvements are divided by authorities into useful improvements, namely, those which improve the property or add to its value, and luxurious improvements, such as statutary."

(Wille, "Landlord and Tenant in South Africa", 4th Edn. p. 265).

It seems to me that what the defendant-respondent has done was to effect a useful improvement which would serve a useful purpose and has rendered the property more valuable. If this was so, I fail to understand, how the acts complained of could have caused a deterioration of the condition of the premises let; on the contrary, the new water-sealed latrine has improved the condition of the premises let and enhanced its value. The question whether this was constructed with or without the consent of the landlord can only affect the tenant's claim for compensation for the improvement made.

I fail to see how a construction, which, if made by the landlord, would amount to an improvement, could, on the other hand, if made by the tenant, cause a deterioration of the premises.

I have no difficulty in holding that the acts complained of, far from causing a deterioration (i.e. worsening) of the condition of the premises let, had improved the condition of the premises.

I affirm the finding of the Court of Appeal on the matter and dismiss the appeal with costs.

RANASINGHE, C.J., – I agree.

SENEVIRATNE, J. – I agree.

Appeal dismissed.