

ARULRAJASINGHAM
v
THAVYOGARAJAH

COURT OF APPEAL
DISSANAYAKE, J. AND
SOMAWANSA, J.
C.A. NO. 1201/99 (F)
D.C. MT. LAVINIA NO. 431/98
JULY 31, 2002

Rent Act, No. 7 of 1972 – Amendment by Act, No. 55 of 1980, sections 22(1), 22(2), 22(2)1C and 22(C) – Premises let for residence – Tenant in employment – Cessation of employment – Could he claim protection of the Rent Act? – Rent Restriction Act, No. 12 of 1948

Held:

- (i) Under the present Act special provisions had been made in section 22(1)(c) and 2(c) to cover cases where premises are let to an employee for use as a residence by reason of his being an employee of the employer.
- (ii) If an action is filed for the ejectment of the tenant – who is an ex-employee all that the landlord – former employer – will have to prove is that the premises were let to the tenant for use as a residence by reason of his being in service or employment.
- (iii) There will be no question of the landlord having to rely on any of the other grounds mentioned in section 22(1) or on any of the other sections under which a tenant can be ejected from the premises.
- (iv) Prior to the amendment Act, No. 55 of 1980, there was no special provision made in the earlier legislation, the Rent Restriction Act, No. 12 of 1948. If an employer wanted to eject an employee he would have to rely on any of the grounds set out in the Act.

APPEAL from the judgment of the District Court of Mt. Lavinia

Case referred to:

1. *Felix Singho v The Urban Council of Kalutara* (1970) 74 NLR 215 (distinguished)

R.E. Thambiratnam with P. Sivaloganathan for defendant-appellant

P.A.D. Samarasekera, P.C. with S. Mahenthiran P.C. and A.R. Surendran for plaintiff-respondent.

Cur.adv.vult.

April 30, 2002

DISSANAYAKE, J.

The plaintiff-respondent instituted this action for ejection of the defendant-appellant from premises bearing No. 2, 'L' Block, Bambalapitiya Flats described in the schedule to the plaint on the basis that the said premises was let to him for his residence by reason of his being in service and employment of the plaintiff-respondent and that the defendant-appellant had ceased to be an employee on 31st October 1966. 1

The defendant-appellant by his answer whilst denying the averments in the plaint prayed for dismissal of the plaintiff-respondent's action. 10

The case proceeded to trial on 5 issues and at the conclusion of the trial, the Learned District Judge by his judgment dated 29.01.1999, entered judgment for the plaintiff-respondent as prayed for.

It is from the aforesaid judgment that this appeal is preferred.

Learned Counsel for the defendant-appellant contended that the District Judge erred when he failed to consider that the defendant-appellant was foremost a tenant and the fact that he performed services to the plaintiff-respondent was incidental and that tenancy was not conditional upon the performance of service to the plaintiff-respondent. 20

He contended further that the learned District Judge was in error when he concluded that the defendant-appellant was a service occupier and not a tenant who is protected by the Rent Act.

At the commencement of the trial the following matters were recorded as admissions:-

- (1) The receipt of the notice to quit dated 24.03.1998.
- (2) The defendant-appellant commenced his employment under the plaintiff-respondent from February 1989.
- (3) The defendant-appellant occupied the relevant premises from April 1991. 30
- (4) Monthly rent being Rs. 500/-
- (5) The defendant-appellant ceased to be in the plaintiff-respondent's employment on 31st October 1996.
- (6) Rent was deducted from the defendant-appellant's salary from the month of April 1991 to 31st October 1996.
- (7) Ownership of the premises is that of the plaintiff-respondent.
- (8) On 6th April 1998, the defendant-appellant forwarded a sum of Rs. 9000/- to the plaintiff-respondent which was returned to the defendant-appellant. 40
- (9) The defendant-appellant stated that this sum of Rs. 9000/- was the rent from 1st November 1996 to 30th April 1998.

By the amending Act No. 55 of 1980 section 22(1) and section 22(2) of the Rent Act No. 7 of 1972 were amended by adding subsection "(c)" *inter alia*; section 22(1)(c) and section 22(2)(c) provided for ejection of tenants to whom premises were let for residence by virtue of the fact of their being in the service or in the employment of the landlord and who had ceased to be in the service of or employment of the landlord. 50

Therefore the crucial issue in this case is the question whether the defendant-appellant was let the premises in suit to be used as a residence by reason of his being in the service or in the employment of the plaintiff-respondent or not.

The following circumstances that transpired in the evidence of the plaintiff-respondent establishes that the defendant-appellant was let the premises in suit to be used as a residence purely because he was in the employment of the plaintiff-respondent:-

- (1) No efforts made by the plaintiff-respondent to advertise the house or to engage the services of brokers to get tenants for his house. 60

- (2) Absence of advance payments of rents or deposit of sums of money as security for electricity and water bills. Absence of payments of money to the landlord in consideration of the lease which is called "key money" in brokers parlance.
- (3) The fact that the defendant-appellant is neither a relative nor a friend of the plaintiff-respondent. However the defendant-appellant claimed that they are from the same village in Jaffna and a distant relative. 70
- (4) The ability of the plaintiff-respondent to rent out the premises in suit which is an apartment situated in a prime residential area at Galle Road, Colombo 04, consisting of two bedrooms, one toilet. etc. for much more than Rs. 500/- per month.
- (5) At the time of renting out, the defendant-appellant being in the service of the plaintiff-respondent.
- (6) There being no transaction between the plaintiff-respondent and the defendant-appellant except the relationship of master and servant. 80
- (7) Deduction of the monthly rent from the defendant-appellant's monthly wage.
- (8) No moneys accepted as rent outside the rent deducted from the salary of the defendant-appellant.
- (9) Non-stipulation of payment of rents at the end of every month. This is evident where in some months two months rental is deducted from the salary.
- (10) Non-payment of monthly rent by the defendant-appellant from the time of the resignation from employment upto April 1998 for a period of about one and a half years. If he was not a service tenant one would expect the payment of rents regularly when it falls due at the end of every month. 90
- (11) The provision of residential facilities by the plaintiff-respondent to some of his employees at his office building in Colombo 11 and his stores complex in Colombo 14, which establishes that the plaintiff-respondent is a businessman who has furnished residential facilities to his needy employees.

(12) Contents of letter dated 05.11.1996 (P1A) that was sent to the defendant-appellant, which was sent on the termination of employment by the defendant-appellant on 31.10.1986, requesting him to hand back the house provided to him by the plaintiff-respondent's company, in order that it could be given to some other member of his staff. 100

The Learned District Judge on consideration of some of the above facts had rightly concluded that the plaintiff-respondent had let the premises in suit to the defendant-appellant only for the reason of his being in employment under him and for no other.

I considered the contention of learned counsel for the defendant-appellant that there was a finding by the learned District Judge to the effect that the defendant-appellant is a service occupier. Having examined the judgment of the learned District Judge I am unable to find such a finding by the learned District Judge in the judgment. The finding of the learned District Judge is that the premises was let as a residence to be occupied by the defendant-appellant, by the plaintiff-respondent during the period of his employment. 110

Learned Counsel for the defendant-appellant argued that once tenancy is admitted, the fact that the tenant is also an employee can only make him a service tenant, who is protected by the provisions of the Rent Act. 120

He further sought to argue that to eject such a tenant the landlord will have to avail himself the same grounds that are available against a normal tenant.

Learned Counsel for the defendant-appellant cited the decision of Thamotheram, J. in the case of *Felix Singho v The Urban Council, Kalutara*¹ where he expressed the view that once tenancy is admitted, the fact that the tenant is also an employee can only make him a service tenant. He also stated that a service tenant is protected by the Rent Restriction Act. 130

The decision of *Felix Singho v The Urban Council, Kalutara* (*supra*) was based on the Rent Restriction Act, No. 29 of 1948.

The Rent Act, No. 7 of 1972 came into operation on 1st March 1972 and repealed the Rent Restriction Act, No. 29 of 1948.

The amending Act, No. 55 of 1980, amended sections 22(1) and 22(2) by bringing in two new subsections (c). This amendment has given the right to landlords whose employees have come into occupation of residences by virtue of their being employees of the landlords to eject them when the services of the employees terminate. 140

Therefore it is apparent that the decision in *Felix Singho v The Urban Council of Kalutara (supra)* has no bearing on this case which is an action based on section 22(2)(c) of the Rent Act, No. 7 of 1972.

Learned President's Counsel for the plaintiff-respondent adverted to Robert Megarry on "The Rent Acts" (Volume I) (Eleventh Edition) (1988) at page 76, where it is stated as follows:-

"If an employee is a service tenant properly so-called, he holds a true tenancy, protected by the Acts. His contract of service will be relevant only in that either his contractual tenancy is made determinable with his employment (a term to this effect will not normally be implied), or else because the employment provided the motive for the employer granting the tenancy, in which case the Acts in some circumstances provide the employer with an additional ground for claiming possession against the employee". 150

Learned President's Counsel for the plaintiff-respondent also adverted to page 68 of "The Rent Act No. 7 of 1972, being an exposition of the Act" by Noshir C.J. Rustomjee (1972), under the heading "Ejection of a tenant under section 22(1)(c) and 22(2)(c) of the Act" where he has stated thus:- 160

"Sometimes employers find it necessary to have their employees residing either on the premises or in close proximity to the employers place of work. For instance Storekeepers and Works Managers are quite often given residential premises of the place of work. In some instance, employees, out of a desire to help their employees, provide residences for their employees, so long as they are in the service of the employees. 170

In the instances mentioned above, where the employee ceases to be in the employment of the employer, it is only natural and in the interests of the employee that the premises, which have been let out in the circumstances mentioned above, should be occupied by the successor of the employee, who has left the services of the employer."

Prior to this Act coming into operation, there was no special provision made in the earlier legislation (The Rent Restriction Act, No. 12 of 1948) to cover cases which have been mentioned above. If an employer wanted to eject an employee to whom residential premises had been let in the aforementioned circumstances, the employer would have had to rely on any one of the grounds set out in the Rent Restriction Act, No. 29 of 1948. This provision did cause a lot of hardship to employees and in some instances, even discouraged employers from providing residential premises for their employees, so long as they were in the service of the employers. 180

Under the present Act, special provision had been made in section 22 (1)(c) and (2)(c) to cover cases where premises are let to an employee for use as a residence by reason of his being an employee of the employer who in this instance would be the landlord for the employee. If an action is filed for the ejection of the tenant (who is an ex-employee), all that the landlord (who is the former employer) will have to prove, is that the premises were let to the tenant for use as residence by reason of his being in the service or employment. There will be no question of the landlord having to rely on any of the other grounds mentioned in section 22(1) of the Rent Act, No. 7 of 1972, or on any of the other sections under which a tenant can be ejected from the premises. 190

In the light of the above reasoning I am of the view that the learned District Judge has rightly entered judgment for the plaintiff-respondent as prayed for in the plaint. 200

I see no reason to interfere with the said judgment of the learned District Judge.

Therefore I dismiss the appeal of the defendant-appellant with costs.

SOMAWANSA, J. - I agree

Appeal dismissed.