

SRIYANI PEIRIS

v.

MOHAMED

COURT OF APPEAL.

G. P. S. DE SILVA, J. (PRESIDENT) AND GOONEWARDENA, J.

D.C. MOUNT LAVINIA 579/ED.

CA 415/80 (F).

MARCH 11 AND 12, 1986.

Landlord and tenant—Rent Act, No. 7 of 1972, section 22(1)(bb)—Tenancy commencing prior to date of operation of section 22(1)(bb)—Notice—Does attornment to new landlord create a new contract?

(1) Where in a tenancy begun in 1965 the landlord informs the tenant to attorn to a new landlord in 1977 and the tenant in compliance attorns to the new landlord the resultant legal effect is:—

(a) There is a termination of the tenancy under the original landlord.

(b) A new tenancy is created from the date of attornment under the new landlord to whom the tenant attorns and pays rent.

(2) Section 22(1)(bb) necessarily refers to the "current" landlord who institutes the action for ejection.

(3) As the tenancy commenced under the "current" landlord who instituted the action after the operative date of the Rent Act namely after 01.03.1972, section 22(6) of the Act applies and one year's notice is required to terminate the tenancy.

(4) A notice of 6 months which was what had been given is insufficient to terminate the tenancy and the action must fail.

Case referred to:

Fernando v. Wijesekera—(1969) 73 NLR 110.

APPEAL from judgment of the District Court of Mount Lavinia.

J. W. Subasinghe, P.C. with *D. R. P. Goonetilake* and *Mjss T. Keenavinna* for plaintiff-appellant.

Faiz Mustapha with *M. I. H. M. Sally* and *Suhaid* for defendant-respondent.

Cur. adv. vult.

May 16, 1986.

G. P. S. DE SILVA, J. (President, C/A)

The plaintiff instituted this action to eject her tenant, the defendant, from the premises in suit. The action was founded on section 22(1)(bb) of the Rent Act as amended. The section reads thus:

"Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises the standard rent (determined under section 4) of which for a month does not exceed one hundred rupees shall be instituted in or entertained by any court, unless where—such premises, *being premises which have been let to the tenant prior to the date of the commencement of this Act*, are in the opinion of the court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord.".

The question that arises for decision on this appeal is whether the premises in suit "have been let to the tenant prior to the date of the commencement of this Act". The date of the commencement of the Rent Act was 1st March 1972. The District Judge held that the premises were let to the tenant after 1st March 1972 and since the plaintiff as the landlord has given only 6 months' notice (P4) and had failed to give one year's notice in writing of the termination of the tenancy as required by section 22(6) the notice (P4) was bad in law and for that reason dismissed the plaintiff's action. The plaintiff has now preferred this appeal.

At the hearing before us it was not in dispute—

- (a) that the standard rent of the premises for a month did not exceed Rs. 100;
- (b) that the defendant was the tenant of the plaintiff's father from 1st November, 1965 to 30th September, 1977;
- (c) that the plaintiff became the landlord of the premises from 1st October, 1977;
- (d) that by letter dated 22.9.77 (R3) the plaintiff's father had required the defendant to pay all "future rents" to the plaintiff.

It was also conceded before us that if the finding of the trial Judge that the premises were let after 1st March 1972 is correct, then the period of the notice of termination of the tenancy was inadequate and the action had to fail.

The principal submission of Mr. Subasinghe, counsel for the plaintiff-appellant, was that the contract of tenancy commenced on 1st November, 1965 when the landlord was the plaintiff's father and that the same contract *continued* even after 1st October, 1977 when the plaintiff became the landlord. In other words, counsel argued that the contract of tenancy which commenced on 1st November, 1965 continued even after 1st October, 1977 although the plaintiff's father ceased to be the landlord and the plaintiff became the new landlord. Mr. Subasinghe urged that an "attornment" does not create a new contract of tenancy. Counsel maintained that it was the self-same contract, though with a new landlord. He stressed that the terms of the contract remained the same.

I find myself unable to agree with Mr. Subasinghe's submissions. At the outset it may be stated that it was not the case of the plaintiff, as set out in the plaint, that there was a continuation of the tenancy which commenced on 1st November, 1965 even after the plaintiff became the landlord on 1st October, 1977. The document R3 is intensely relevant in this connection. It is a letter dated 22nd September, 1977 written on the instruction of the plaintiff's father requesting the defendant to pay rent in the future to the plaintiff. It is not in dispute that the defendant thereafter paid rent to the plaintiff. Can it then be said that even after R3 the earlier contract of tenancy between the plaintiff's father and the defendant continued? I think not.

Weeramantry, J. in *Fernando v. Wijesekera* (1), had occasion to examine "the precise meaning of attornment when used in our law in relation to the acknowledgement by a tenant of a new landlord". After an exhaustive review of the position under the English Law and the Roman Dutch Law, the learned judge reached the conclusion "that the notion of attornment contains no element which points to the continued existence of the prior contract—a meaning which is often mistakenly supposed to be inherent in the term". In my view, Mr. Mustapha, counsel for the defendant-respondent, was right in his submission that the effect of R3 was to terminate the contract of tenancy that existed between the plaintiff's father and the defendant.

Mr. Mustapha further submitted that the "letting" contemplated in section 22(1)(bb) of the Rent Act must necessarily refer to the *current* landlord who institutes the action for ejectment. It seems to me that this submission is well founded. What is relevant is the contract of tenancy upon which the action is founded and not a contract of tenancy that existed at an earlier point of time. Admittedly the plaintiff became the landlord only from 1st October, 1977, that is after the date of the commencement of the Rent Act. I hold that the contract of tenancy between the plaintiff and the defendant commenced only on 1st October, 1977. The provisions of section 22(1)(bb) apply to premises which were let prior to 1st March 1972. The premises having been let "on or after the date of the commencement of this Act" within the meaning of section 22(1)(b), the plaintiff was required to give one year's notice in writing of the termination of the tenancy—vide section 22(6). But as stated earlier, the notice given by the plaintiff is only 6 months' notice. The notice of termination of tenancy (P4) is therefore *bad in law* and for that reason the plaintiff's action must fail.

The judgment of the District Court is accordingly affirmed and the appeal is dismissed with costs fixed at Rs. 210.

GOONEWARDENA, J. — I agree.

Appeal dismissed.