

HUSSAN
v.
AUTHORISED OFFICER, COLOMBO RENT BOARD

COURT OF APPEAL
ATUKORALE, J. (P/CA); AND
H. A. G. DE SILVA, J.
C.A. APPLICATION NO. 471/82
M.C. FORT COLOMBO CASE NO. 40747
JANUARY 10, 1983.

Rent Act – Leasing of residential premises for 5 years under s. 29 (2) of the Act – Application of s. 2 of the Prevention of Frauds Ordinance – Failure to vacate premises after 5 years – Non-notarial agreement – Liability of the tenant for conviction of an offence under s. 42 (2) of the Act.

By an agreement entered into in terms of section 29 (2) of the Rent Act and registered with the Rent Board in compliance with that section, the landlord "leased" the premises in dispute at a monthly rental of Rs. 201. The agreement was "valid for a period of 5 years". The tenancy was terminable by either party with 3 months' written notice. However, such termination was not permitted until the expiration of a period of 3 years. The tenant also agreed to vacate the premises in the event of the marriage of the landlord's son or daughter taking place after 3 years but before the expiry of 5 years. The agreement was not notorially attested in terms of section 2 of the Prevention of Frauds Ordinance.

Held:

1. There is nothing in section 29 (2) which expressly or impliedly, excludes the operation of section 2 of the Prevention of Frauds Ordinance.

Per Atukorale, J. (P/CA)

"Where, as in the instant case, the letting of the residential premises is for a period of not less than 5 years, I am of the opinion that the formalities prescribed by section 2 of the Prevention of Frauds Ordinance should be observed."

2. As the agreement had not been notarially executed it was invalid in law. Hence, the tenant had not contravened section 29 (3) of the Rent Act by failure to vacate the premises at the end of the period specified in the agreement. As such she could not be convicted of an offence under section 42 (2) of the Act.

Case referred to :

1. *Pararajasekaram v. Vijyaratnam* – (1974) 76 NLR 470.

APPLICATION for revision of the judgment of the Magistrate's Court of Colombo.

A. A. M. Marleen for petitioner.

R. G. Dep, State Counsel for the respondent.

Cur. adv. vult.

April 5, 1983.

ATUKORALE, J. (P/CA)

The subject-matter of this application is a part of premises No. 13/1, Charles Way, Colombo 3, and is governed by the provisions of the Rent Act, No. 7 of 1972 as amended from time to time. The landlord thereof entered into a written agreement, P1 with his tenant, the present petitioner, on 10.03.1975 to let the same at a monthly rental of Rs. 201. P1 states that the portion "is being given out on lease" as the landlord did not at the moment require the same for his occupation. It was "Leased" subject to certain terms. The monthly rental was payable on or before the 25th of each and every month. It was open to either the landlord or the tenant (the petitioner) to terminate the tenancy on 3 months' notice in writing provided, however, that neither party was permitted to do so till the expiration of a period of 3 years. The agreement further provided that "it shall be valid for

a period of 5 years" from the date of its execution (10.03.1975). The petitioner also agreed that in the event of the marriage of the landlord's daughter or son taking place during the continuance of the tenancy, the petitioner "shall after 3 years but before the expiry of 5 years hand over the vacant possession of the premises to the landlord". The agreement was signed by the landlord and the petitioner in the presence of two witnesses but was not notarially attested in terms of section 2 of the Prevention of Frauds Ordinance. The petitioner entered into and continued in occupation of the premises in pursuance of this written agreement for the full period of 5 years ending on 11.03.1980. She failed to vacate same at the expiration of this period. The respondent who is Authorised Officer for the purpose of the Rent Act and as such is empowered under section 44 (5) to institute prosecutions in respect of offences under the Act, charged the petitioner in the Fort Magistrate's Court with having contravened the provisions of section 29 (3) of the Act in that she failed to vacate the premises at the end of 5-year period specified in the agreement P1, an offence punishable under section 42 (2) of the Act. After trial the learned Magistrate found the petitioner guilty of the said charge and imposed on her a fine of Rs. 500, in default 6 months' imprisonment. The petitioner seeks to have this order revised in these proceedings.

Section 29 of the Rent Act stipulates that where an Agreement under section 29 (2) is entered into, the tenant shall vacate the premises at the end of the period specified in such agreement or as the case may be, on the happening of the event specified therein. It was the contention of learned counsel for the petitioner before us that the obligation of a tenant to vacate the premises under section 29 (3) arises only where there is a valid agreement in law entered into between the parties under section 29 (2). Section 29 (2), contemplates a letting of premises upon a written agreement or contract for a period specified therein, such period being not less than 5 years or until the happening of an event specified

therein. He submitted that a letting of a premises for a period of 5 years (as in the instant case) to be valid in law requires notarial attestation in terms of section 2 of the Prevention of Frauds Ordinance. P1 has not been so attested and is therefore of no force or effect in law. It is thus not an agreement entered into under section 29 (2) and there is no legal obligation on the petitioner to vacate the premises at the end of the 5-year period specified in P1. It was, therefore, contended that the petitioner had not acted in contravention of section 29 (3) of the Act and the order must be set aside.

Section 29 (2) of the Rent Act makes it lawful with effect from the date of commencement of the Act, for a landlord and a person seeking to be a tenant of residential premises to enter into a written agreement for the purpose of letting the same for a period specified therein, the period not being less than 5 years, or until the happening of an event therein, where at the end of each such period or of the happening of the event the landlord requires the premises for his occupation or for the occupation of a member of his family as a residence. It was not in dispute before us that it was an agreement purported to have been entered into between the parties under section 29 (2) of the Act. It was also not in dispute that P1 was not notarially attested in terms of section 2 of the Prevention of Frauds Ordinance P1 being a letting of premises for a period of 5 years, the non-compliance with requirement of the latter section would render it null and void in law – vide *Pararajasekeram v. Vijayaratnam*⁽¹⁾. The question is whether section 2 of this Ordinance applies to a written agreement entered into under section 29 (2) of the Rent Act. In my view it would apply. There is nothing in section 29 (2) which expressly or impliedly, excludes the operation of section 2 of the Ordinance. The opening words of section 29 (2), namely, "notwithstanding anything in any other provisions of this Act" seem to lend support to this construction. Further, section 29 (2) seems to me to deal primarily with the contents rather than the form of the written agreement. Whereas in the instant case, the letting of the residential premises is for a period of not less

than 5 years, I am of the opinion that the formalities prescribed by section 2 of the Prevention of Frauds Ordinance must be observed, if the written agreement is to be of any force or effect in law. I, therefore, hold that P1 is invalid in law, and does not constitute an agreement within the meaning of section 29 (2) of the Rent Act. There is thus no legal obligation on the petitioner to vacate the premises at the end of the period specified therein. She has, therefore, not contravened section 29 (3) of the Act. The conviction of the petitioner is set aside and she is acquitted.

DE SILVA, J. – I agree.

Conviction set aside; petitioner acquitted.