JAYASINGHAM
v.
ARUMUGAM

SUPREME COURT
M. D. H. FERNANDO, J.
AMERASINGHE, J. AND
WADUGODAPITIYA, J.
S.C. APPEAL NO. 8/92
11 MAY, 1992.

Landlord and tenant – Letter by tenant stating he will vacate the premises – Does it amount to a termination of the tenancy? – Rent Act, Section 22.

Held:

As the issue was whether in terms of the Rent Act, No. 7 of 1972, a letter given by the tenant that he would vacate the premises, the Roman Dutch law would be

irrelevant. Section 22 does not set out as a ground for ejectment the giving of a notice to quit by the tenant to his landlord. Hence the letter given by the tenant will not terminate the tenancy in terms of the Rent Act.

APPEAL from order of the Court of Appeal.

P. A. D. Samarasekera P.C. with *K. de Alwis* for defendant-appellant.

A. K. Premadasa, P.C. with *E. C. de Silva* for plaintiff-respondent.

Cur adv vult.

17th December, 1992.

WADUGODAPITIYA, J.

The Plaintiff-Respondent-Respondent (hereinafter referred to as the Respondent) instituted this action against the Defendant-Petitioner-Appellant (hereinafter referred to as the Appellant) in the District Court of Mount-Lavinia praying, *inter alia*, for the ejectment of the Appellant and all those holding under him from the premises in suit, viz., the ground floor apartment bearing Assessment No. 42, situated in 36th Lane, Colombo 6, and depicted as Unit 1 in Condominium Plan No. 480 dated 9th September, 1986 and made by Sinnetamby, Licensed Surveyor. The Respondent also prayed for damages in a sum of Rs. 1,100/- from 1st July to 31st October, 1988, and for further damages at Rs. 275/- per month from 1st November, 1988 until the Respondent is restored to possession.

The plaint (marked P1 together with its translation marked P1A) recites that the Appellant entered upon the premises on a monthly tenancy on a rental of Rs. 275/- payable on or before the end of every month. The plaint next avers that –

> "On or about 25th of May, 1988, the Defendant (i.e. the Appellant) terminated the said tenancy at the end of June, 1988. Notwithstanding such termination, the Defendant continues in wrongful and unlawful occupation from 1st July, 1988, causing loss and damages to the Plaintiff (i.e. the Respondent) at Rs. 275/- per month."

The answer of the Appellant (marked P2 together with its translation marked P2A) admits the monthly tenancy and avers that

such tenancy commenced with effect from 1.10.1985, but states that the Appellant has paid rent at the rate of Rs. 4,250/- per month from 1.10.1985 upto 31.12.1988 and thereafter at the rate of Rs. 275/- per month.

The Appellant specifically denies the averment in the plaint that he (the Appellant) terminated the tenancy. He avers that the contract of tenancy has not been lawfully terminated and that therefore the Respondent cannot have and maintain the action without terminating the tenancy.

The Appellant further pleads in his answer that the premises are residential premises governed by the Rent Act, No. 7 of 1972, and that, accordingly, the Respondent cannot maintain this action on the ground that the Appellant has given notice to quit the said premises, and adds that he, the Appellant is, in any event entitled to withdraw such notice. He avers that the plaint does not set out the requisites necessary to entitle the Respondent to maintain this action in ejectment. He also sets out a claim in reconvention in a sum of Rs. 155,756/- being overpayment of rent.

The Respondent filed replication (marked P3 together with its translation marked P3A) denying the overpayment and stating that a tenant is, in law, entitled to terminate his tenancy with a month's notice; that thereafter no further notice is required from the landlord; that once tenancy has been terminated either by the landlord or the tenant unilaterally, such notice cannot be withdrawn, and that the provisions of the Rent Act, No. 7 of 1972 have not affected the common law right of a tenant to terminate his tenancy.

At the trial, the parties admitted the fact of the tenancy; that the premises were residential premises governed by the Rent Act, No. 7 of 1972, and that a letter dated 25.5.1988 (marked P5) was sent by the Appellant (tenant) to the Respondent (landlord).

Thereafter issues were framed by both parties and upon their being accepted by Court, the Appellant moved that his issue No. 4 be taken up as a preliminary issue of law in terms of section 147 of the Civil Procedure Code, to which Court agreed.

Issue No. 4 runs as follows :-

"1972 අංක 7 දරණ ගෙවල් කුලී පනත අනව විත්තිකරු පිටවන බවට ලිපියක් දී ඇති පදනම් මත, පැමිණිලිකරුට විත්තිකරුව නෙරපීමට නඩු තිබෙන්නක් ඇති වේද?"

The English translation would be as follows:-

"In terms of the Rent Act, No. 7 of 1972, does a cause of action accrue to the Plaintiff (i.e. the Respondent) to eject the Defendant (i.e. the Appellant) on the basis that the Defendant has given a letter stating that he will vacate the premises ?"

This issue is founded on the averments contained in paragraph 8 (b) of the Appellant's answer marked P2 (with its translation marked P2A), and reads as follows:-

"The Defendant (i.e. the Appellant) specifically pleads that the premises in suit are governed by the provisions of the Rent Act, No. 7 of 1972 and that accordingly, the Plaintiff cannot, in any event, maintain this action on the ground that the Defendant has given notice to quit the said premises."

After oral and written submissions by both the Respondent and the Appellant (marked P6 and P7 respectively), the learned Additional District Judge made order (marked P8) answering the said Issue No. 4 in the affirmative.

Being aggrieved by the said order, the Appellant moved the Court of Appeal by way of revision in C.A. Revision Application No. 890/90, praying that the above order be revised. However, on 12.9.91, the Court of Appeal dismissed the Appellant's application with costs. Hence this appeal canvassing the order of the Court of Appeal.

Before proceeding to consider the question whether the said Issue No. 4 has been answered correctly, I must make the observation that it is only in document P4, viz., the record of the proceedings of 17th July, 1990, (which record has been kept in the Sinhala language), that the said Issue No. 4 (marked P4A) appears in its correct form in Sinhala. It is for this reason that I have quoted the said issue in its original Sinhala.

Although the learned Additional District Judge, in his order dated 28.8.90 (marked P8), quotes the said Issue No. 4 correctly in Sinhala, he thereafter proceeds to place an erroneous interpretation thereon, viz., that the said issue speaks of the Defendant (i.e. the Appellant) having, by a letter, **"terminated the tenancy"** whereas the Defendant admits only that he gave a letter dated 25.5.88 to the Plaintiff (i.e. the Respondent) and nothing more. The learned Additional District Judge thereafter proceeds to answer Issue No. 4 in the affirmative, having decided to apply the Roman Dutch Law; quite unmindful of the fact that that issue specifically calls for an answer "In terms of the Rent Act, No. 7 in 1972 . . .".

The Appellant's position has always been that he merely gave a letter (P5) to the Respondent, and that the contract of tenancy was never terminated. This position he has set out quite clearly in his answer (marked P2 together with its translation P2A).

Paragraph 7 of the Appellant's answer sets out as follows :–

> "The Defendant (i.e. the Appellant) further pleads that the contract of tenancy between the Plaintiff and the Defendant has not lawfully been terminated and that consequently the Plaintiff cannot have and maintain this action."

Paragraph 8 (a) of the said answer states :–

> "The Defendant (i.e. the Appellant) specifically denies the averments in paragraph 3 of the plaint that he terminated the said tenancy, but further pleads that, in any event the Plaintiff cannot have and maintain this action without terminating the said tenancy."

It is all the more startling then, to find that in all the papers filed in this case by the Appellant, the vital portion of Issue No. 4 has been mistranslated to read, ". . . on the basis that the Defendant (i.e. the Appellant) has by letter **terminated the tenancy"** whereas the Sinhala original clearly states:– . . . විත්තිකරු පිටවන බවට ලිපියක් දී ඇති පදනම මත . . .".

In this connection, it must be observed that even the Court of Appeal, in its judgment dated 12.9.91 (marked P13), perpetuates the mistranslation by the use of the words, "has by letter **terminated the tenancy.**"

It is thus seen that this mistranslation has pervaded the entire course of the proceedings, and continued in that same uncorrected form even during the argument before us.

In considering this matter, it must not be forgotten that this appeal is only upon a single question, viz., how Issue No. 4 raised by the Appellant as a preliminary issue of law, should be answered; and if I may reiterate, that single question is merely whether, in terms of the Rent Act, No. 7 of 1972, a cause of action has accrued to the Respondent (i.e. the Plaintiff) to eject the Appellant (i.e. the Defendant) on the ground that the latter has given the former a letter stating that he will vacate the premises.

The letter in question (marked P5) states laconically :-

"Dear Mr. Arumugam,

We shall vacate your home end of June, 1988. We regret we could not vacate as promised.

Thank you.

Yours sincerely,
Signed/B. G. Jayasingham."

The simple question raised by Issue No. 4, therefore seems to be, whether the mere fact of the tenant giving the above "notice" by his letter, P5, to his landlord, gives rise to a cause of action, in terms of the Rent Act, No. 7 of 1972, to the landlord to eject the tenant from the premises in question. This issue does not seek to go any further into other areas such as the validity of the "notice" and/or whether the said "notice" did in fact have the effect of lawfully terminating the contract of tenancy.

Learned President's Counsel for the Appellant argued that the said Issue No. 4 should be answered in the negative inasmuch as, both the learned Additional District Judge and the Judges of the Court of Appeal had arrived at incorrect conclusions in their attempts to answer it. He urged that the letter P5 did not constitute a ground which gave rise to a cause of action to the landlord to institute proceedings in the District Court for the ejectment of the tenant, inasmuch as such a ground is not mentioned in section 22 of the Rent Act, No. 7 of 1972. Instead, the Respondent should have pleaded a ground mentioned in section 22. He traced the history of the Rent Acts and pointed out that in the earlier enactments, viz., the Rent Restriction Ordinance, No. 60 of 1942 and the Rent Restriction Act, No. 29 of 1948, the fact that the tenant had given notice to quit was mentioned as a specific ground, but the current Rent Act, No. 7 of 1972 deliberately omitted any such ground. He submitted further, that, inasmuch as section 22 of the Rent Act, No. 7 of 1972 commences with the words, "Notwithstanding anything in any other law . . . ", recourse could not be had to the common law.

Learned President's Counsel for the Respondent, on the other hand, argued that the Rent Acts never purported to repeal the common law, and that therefore it was the common law, viz., the Roman Dutch Law, which applied in this case. He submitted that the tenancy could under the common law, be terminated by the tenant giving a notice to quit the premises and that a cause of action did accrue to the Respondent to eject the Appellant. He urged therefore, that Issue No. 4 should be answered in the affirmative.

Inasmuch as Issue No. 4 specifically states : "In terms of the Rent Act, No. 7 of 1972 . . .", it is clear that the answer to this issue must be confined within the four corners of that Act. I therefore have no hesitation in stating that any consideration of the applicability of the Roman Dutch Law is irrelevant to the consideration of this issue. We are not here being called upon to adjudicate on the entire question of the tenancy and the ejectment of the tenant. On the contrary, we are called upon to adjudicate upon the limited question couched in very specific terms in the form of a specific issue, viz., Issue No. 4. This issue must be considered and answered in the form in which it has been framed and accepted by the learned Additional District Judge,

and it is not competent for us to alter the wording of such issue, or enlarge the scope of such issue in any way nor is it permissible for us to place any interpretation upon its specific wording. We are therefore called upon, strictly, to answer Issue No. 4 as it stands. It would be quite another matter and other considerations would arise if the words, "In terms of the Rent Act, No. 7 of 1972 . . ." were absent.

In considering Issue No. 4 in the context and within the framework of the Rent Act, No. 7 of 1972, it may be mentioned that section 22 of the said Act, as its marginal note indicates, deals with "Proceedings for ejectment", and sets out the grounds for ejectment. However, nowhere does section 22 mention, as a ground for ejectment, the giving of a notice to quit by the tenant to his landlord. It is therefore clear that the giving of such a notice to quit the premises, or, in the context of this case, the giving of the letter P5 by the Appellant to the Respondent, stating that he (the Appellant) will vacate the premises, will in no way give rise to a cause of action to the Respondent, under the Rent Act, No. 7 of 1972, to eject the Appellant from the premises in suit.

This being the only matter for consideration before us, I would answer Issue No. 4 in the negative.

I therefore allow this appeal and set aside the order of the Court of Appeal dated 12.9.91, and direct that the record in this case be sent back to enable the trial in this case to be proceeded with in the District Court of Mount Lavinia.

I also make order that the Appellant will be entitled to his costs both in this Court and in the Court below.

M. D. H. FERNANDO, J. – *I agree.*

AMERASINGHE, J. – *I agree.*

Case sent back for trial to proceed.