

ESUFALI
v.
JIFFRY

COURT OF APPEAL.

ISMAIL, J.,

C.A. 35/94 (F).

D.C. MT. LAVINIA NO. 2516/RE.

APRIL 29, 1997.

JUNE 5, 16, 1997.

Rent Act, No. 7 of 1972, Sections 22(2) (bb) (ii), 22(7), 27(1) – Landlord acquiring ownership whilst being the landlord.

The plaintiff-appellant sought to eject the defendant respondent in terms of section 22(2) (bb) (ii) of the Rent Act. Plaintiff's action was dismissed on the ground that he had acquired ownership of the said premises after the defendant became his tenant, which fact acted as a statutory bar – section 22(7). On appeal –

Held:

1. The plaintiff-appellant has acquired ownership of the said premises whilst being the landlord of the defendant respondent; the statutory bar in section 22(7) would not be applicable to him.

The proviso is specific and must be within its terms. It does not include a landlord who was the landlord of the premises let before the tenancy arose.

APPEAL from the Judgment of the District Court of Mount Lavinia.

Cases referred to:

1. *Shanmugavadivu v. Ayyathurai* – 1986 3 CALR 238 at 240.

2. S.C. Appeal No. 81/1986 – SCM 11.10.91.

A. A. M. Marleen with M. R. M. Ramzeen for plaintiff-appellant.

Vernon Boteju with P. Sivaloganathan for the defendant-respondent.

Cur. adv. vult.

July 21, 1997.

ISMAIL, J.

The plaintiff-appellant instituted action by a plaint dated 16.6.86 seeking to have the defendant-respondent ejected from the premises called 'St. Malo' bearing assessment No. 29 at Elibank Road, Colombo 5, having deposited with the Commissioner of National

Housing a sum of Rs. 10,690/- being the equivalent of five years' rent for payment to the tenant in terms of section 22(2)(bb)(ii) of the Rent Act. At the conclusion of the trial the learned District Judge by his judgment dated 3.2.94 came to the finding in favour of the plaintiff that he is not the owner of any other residential premises, that he has terminated tenancy of the defendant by a notice to quit dated 2.9.85 and that he has deposited the equivalent of five years rent as aforesaid. The standard rent of the said premises for a month exceeded Rs. 100/- and its authorised rent was Rs. 176.16 per month. However, the plaintiff's action was dismissed on the ground that he had acquired ownership of the said premises after the defendant became his tenant, which fact acted as a statutory bar to the institution of this action in terms of section 22(7) of the Rent Act. The plaintiff-appellant seeks to have this finding set aside in this appeal.

It appears from the Fiscal Conveyance No. 20344 dated 8.10.56 (P8) that the premises in suit owned by F. R. Deveson and Mrs. Beryl Deveson, who carried on business as F. R. Deveson and Co. were purchased by Norman Usoof Ali on 15.12.55 when it was exposed to a public sale by virtue of a writ of execution issued on 12.6.53 in an action bearing No. 27586/M in the District Court, Colombo.

The plaintiff claimed that he is the owner of the premises and took up the position that his brother Norman Usoof Ali who purchased the said property held it on trust for him, and as confirmation, he referred to the recitals to that effect in the special power of attorney dated 1.12.77 (P12) granted by Norman Usoof Ali who was then living abroad to facilitate the transfer of the said property to him by deed. The said premises were transferred by Norman Usoof Ali through the holder of the special power of attorney to the plaintiff by deed of transfer No. 381 dated 2.2.79 (P11) attested by D. B. Danny de Silva, N.P.

The plaintiff stated in his evidence that he was in occupation of the premises since the year 1950 and that as Mrs. Beryl Deveson had only a fiduciary interest in this property which was subject to a fide-commissum, he entered into a lease agreement No. 102 dated 17.8.59 (P9) with her, valid for a period of ten years from 1.7.59, to safeguard his right of possession in the event of her death. Before the expiry of the period of the said lease, the plaintiff himself as the landlord leased out the said premises to the defendant for a period of

four years by a lease agreement No. 211 dated 15.9.65 (P10) attested by S. Hari Hara Aiyer, N.P.

The learned District Judge has accepted the submission on behalf of the defendant that the plaintiff was barred from instituting this action by section 22(7) of the Rent Act as the ownership of the premises was acquired by him on transfer deed No. 381 dated 21.2.79 (P11) after the defendant came into occupation of the premises consequent to the aforesaid lease agreement dated 15.9.65 (PIO). The position taken up by the plaintiff that he was the owner of the premises as his brother held it on trust for him since its purchase by him at the fiscal sale until the date of the formal transfer by deed P11 was not accepted by the trial judge.

Learned Counsel for the plaintiff-appellant submitted that the prohibition referred to in section 22(7) of the Rent Act is not applicable to the plaintiff who was admittedly the landlord of the defendant prior to the date of his acquisition of the ownership of the premises by the deed of transfer P11 in 1979.

According to the relevant provisions of section 22(7) of the Rent Act, no action or proceedings for the ejection of the tenant of any premises referred to therein shall be instituted, where the landlord is the owner of not more than one residential premises, on the ground that the landlord of such premises has deposited a sum equivalent to five years' rent "where the ownership of such premises was acquired by the landlord on a date subsequent to the specified date ..." meaning the date on which the tenant came into occupation of the premises.

There is a similar prohibition in the proviso to section 27(1) of the Rent Act dealing with the ejection of a tenant of a part of the premises another part of which is occupied by the landlord. It is as follows:

"Provided, however, that the landlord of such residential premises shall not be entitled to institute action or proceedings under the preceding provisions of this subsection for the ejection of the tenant of any part of such premises, if the ownership of such premises was acquired by the landlord on a date subsequent to the specified date by purchase ..."

The Court of Appeal in *Shanmugavadivu v. Ayyathurai*,⁽¹⁾ referring to the aforesaid statutory bar, observed that these provisions were "obviously meant to safeguard the tenant or the subtenant as the case may be, from persons who had purchased rent controlled premises over the head of the tenants and so becoming the new landlord... The legislature could never have intended to deprive a non-owner landlord of any rights, which he was already enjoying, on his subsequently becoming the owner landlord."

The Supreme Court in appeal in the same case – SC Appeal No. 81/1986 – SC minutes 11.10.91⁽²⁾ dealing with the proviso to section 27(1) held as follows:

"The proviso however deliberately seeks to prevent whatever advantages the enacting part may confer on a landlord from being enjoyed by a landlord who becomes such landlord only by virtue of acquiring ownership by purchase made subsequent to the tenant coming into occupation of that part of the premises; that is the construction consonant with the legislative intent and policy of the enactment and which may properly be implied as being consistent with reason and justice. The proviso is specific and must be confined within its terms. It does not include a landlord who was the landlord of the premises let before the tenancy arose."

The plaintiff-appellant in the instant case has acquired ownership of the said premises while being the landlord of the defendant-respondent, and, as pointed out in the judgments referred to above, the statutory bar in section 22(7) of the Rent Act would therefore not be applicable to him. The learned District Judge has erred in holding that the provisions of section 22(7) of the Rent Act was a bar to the institution of the action for ejectment by the plaintiff-appellant.

The appeal is allowed with costs.

The judgment and decree of the District Court are set aside. The plaintiff-appellant will be entitled to a decree for ejectment as prayed for with costs.

Appeal allowed.