

LAKSHMAN DE SILVA
v.
VIVEKANANDAN

SUPREME COURT.
G. P. S. DE SILVA, C.J.
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. NO. 50/93
C.A. NO. 638/83(F)
D.C. COLOMBO NO. 4016/RE
21 AND 23 MARCH, 1994.

Landlord and tenant – Conduct which is a nuisance – Section 22(2) (d) of Rent Act – Damages – Mode of calculation.

Held:

Nuisance in the law of landlord and tenant is no different from nuisance in the law of delict. The acts constituting nuisance must contain an element of gravity.

The test is "Ought this inconvenience to be considered in fact as more than fanciful, more than one of mere delicacy or fastidiousness, as an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions". Abuse and intimidation, parking of cars and vans constantly blocking the access to plaintiff's premises, assaulting plaintiff's brother-in-law, constant harassment by throwing crackers at plaintiff's dogs and generally using threatening and insulting language directed at the plaintiff were rightly held to constitute conduct which is a nuisance justifying ejection.

Damages however must be ascertained with reference to the authorized rent.

Cases referred to :

1. *Burns v. D and G (Pvt) Ltd.* 1949 (4) SALR 135, 137.
2. *Ferreira v. Grant* 1941 WLD 186.
3. *Walter v. Seife* (1851) 4 De G and SM 315.

APPEAL from judgment of the Court of Appeal.

R. K. W. Gunasekera for defendant-appellant.

A. K. Premadasa, P.C. with *Brito Mutunayagam* for plaintiff-respondent.

Cur. adv. vult.

May 05, 1994.

G. P. S. DE SILVA, C.J.

The plaintiff who is the landlord of premises No. 24 1/1, Torrington Avenue, Colombo 7, instituted these proceedings in April 1980 for the ejection of his tenant, the defendant. She claimed a sum of

Rs. 5417/25 as rent for February and damages for March 1980; she further claimed damages at Rs. 5000/- per month from 1st April 1980 until she is restored to possession of the premises. After trial, the Additional District Judge entered judgment for the plaintiff as prayed for. The defendant preferred an appeal to the Court of Appeal but without success. Hence the appeal to this court by the defendant.

The ground of ejection relied on by the plaintiff is set out in section 22(2) (d) of the Rent Act. The material part of the section reads thus:- "the tenant or any person residing or lodging with him or being his sub-tenant has, in the opinion of the court, been guilty of conduct which is a nuisance to adjoining occupiers ...". The acts constituting a "nuisance" have been pleaded in paragraph 4(d) of the plaint in the following terms:- (i) The defendant in or about 22nd December 1979 abused and intimidated the plaintiff (who resides in premises No. 24, Torrington Avenue, Colombo 7); (ii) The defendant on or about 22nd December 1979 assaulted Gilbert Dahanayake, Attorney-at-Law and brother-in-law of the plaintiff in the presence of the plaintiff near the said premises No. 24 Torrington Avenue, Colombo 7, causing thereby fear, pain of mind, and humiliation to the plaintiff; (iii) The defendant parks, cars and vans constantly blocking the access to the plaintiff's said premises No. 24; (iv) The defendant keeps machinery in the said premises No. 24 1/1, the moving and the fitting of the said machinery cause noise and disturbance to the plaintiff; (v) The defendant and his employees... constantly harass the plaintiff by ... throwing crackers at the plaintiff's dogs and generally using threatening and insulting language directed at the plaintiff.

It is to be noted that while the defendant occupied the upstairs portion of the premises, the plaintiff resided on the ground floor. In her testimony at the trial, the plaintiff complained of certain other "acts" on the part of the defendant in support of the allegation of a "nuisance". She stated (a) that on 28.1.80 the defendant caused the outside wall of the ground floor portion of the premises to be broken without her permission. Her oral evidence on this matter was supported by her complaint to the police (P3); (b) she heard a bang on the glass portion which separated the ground floor from the staircase leading to the upper floor. This too was supported by her complaint to the police (P2); (C) that the defendant had allowed the water from the air conditioner to escape into the plaintiff's bed room and kitchen.

At this point it is right to state that this court granted special leave to appeal, not in relation to the findings of fact by the trial Judge, but on the following two questions only: (1) whether the acts found by the trial Judge to have been committed by the defendant constitute a nuisance to the adjoining occupiers within the meaning of section 22(2) (d) of the Rent Act; (2) whether that part of the judgment of the District Court awarding damages in the sum of Rs. 5000/- per month can stand in view of the positive finding of the trial Judge that the premises were protected premises under the Rent Act and the authorized rent was less than Rs. 500/-.

The first matter that arises for consideration is the meaning of the expression "a nuisance" in section 22 (2) (d) of the Rent Act, Mr. R. K. W. Goonesekera, for the defendant appellant has, in my view, succinctly and correctly stated in his written submissions - "nuisance in the law of landlord and tenant is no different from nuisance in the law of delict." In his oral submissions before us, he added, that since the impugned conduct of the tenant forms the basis for an action in ejectment, the acts constituting "a nuisance" must contain an element of gravity. With this submission too, I agree. The relevant test was lucidly set out by Millin, J. in *Burns v. D and G (Pty) Ltd.*,⁽¹⁾ "A nuisance is created in the sense of conduct materially interfering with the ordinary physical comfort of human existence, not merely according to dainty modes of living but plain simple notions among ordinary people. In some such terms as these a nuisance in the present context is defined in English cases which have been followed in our courts, e.g. in *Ferreira v. Grant*⁽²⁾ ... "*Walter v. Selfe*⁽³⁾ is the well known English case where Knight-Bruce, V.C. laid down the test that is usually applied:- "And both on principle and authority the important point next for decision may properly, I conceive, be thus put ought this inconvenience to be considered in fact as more than fanciful, more than one of mere delicacy or fastidiousness, as an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions among the English people." (at page 322).

Now apart from item (iv) in paragraph 4(b) of the plaint (set out above), the other acts pleaded and those in respect of which the

plaintiff testified at the trial were found to have been established by the trial Judge.

In a well considered judgment the trial Judge has carefully evaluated the evidence, both oral and documentary, and rightly reached the finding that the cumulative effect of the acts complained of constitutes a nuisance which would ground an action for ejection. The evidence clearly establishes that the parking of cars and vans which obstruct the access to the plaintiff's residence and the abuse and intimidation directed at the plaintiff are certainly not isolated incidents. This has taken place over a period of about three months, inevitably causing considerable inconvenience and discomfort to the plaintiff. I accordingly hold that the claim for ejection from the premises in suit is well founded, as submitted by Mr. Premadasa, counsel for the plaintiff-respondent.

There remains for me to consider the second question on which special leave to appeal was granted by this Court. Mr. Goonesekera is correct in his submission that the trial judge had erred in granting damages as prayed for in the plaint. The damages must be ascertained with reference to the authorized rent which is Rs. 417/25 per month (vide paragraph 2 of the plaint). The plaintiff is therefore entitled only to a sum of Rs. 417/25 per month from 1st February 1980 until she is restored to vacant possession of the premises and not the amount prayed for in paragraph (b) of the prayer to the plaint. Subject to the aforesaid variation in the judgment and decree of the District Court, the appeal is dismissed with costs fixed at Rs. 1000/-

KULATUNGA, J. – I agree.

RAMANATHAN, J. – I agree.

Decree varied.

And appeal dismissed.