

RAJAPAKSE

v.

BOGODA

COURT OF APPEAL.

SENANAYAKE, J.

EDUSSURIYA, J.

C.A. 786/91(F).

D.C. COLOMBO 7301/RE.

OCTOBER 3, 1996.

Rent Act No. 7 of 1972 as amended by Acts 34 of 1976, 10 of 1977 and 55 of 1980 – Section 2 – Section 22(2) (bb) (ii) – Section 22 (1) – (2) – One house owner – Burden of proof – Contracting out of the statute.

Held:

(1) The burden is laid squarely on the plaintiff to establish that he has only one residential premises.

(2) The contention that even if the owner had more than one residential premises and if they were excepted premises yet the owner could maintain the action because he had only one premises which fell within one residential premises as contemplated under Section 22(1) and (2) cannot be accepted; if one needs to accept this novel concept, a landlord who has numerous residential premises which are excepted residential premises in addition if he was not the owner one premises which falls within section 22(1) (2) (bb) he will be entitled to maintain an action on the grounds of reasonable requirement of the premises for the family is without any merit when one considers the definition of residential premises under the Rent Act.

(3) It is an accepted principle that parties cannot contract outside the Rent Act where the premises is governed by the Rent Act.

APPEAL from the Judgment of the District Court of Colombo.

L. C. Seneviratne, P.C. with Ronald Perera for plaintiff-appellant.

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

Cur. adv. vult.

November 27, 1996.

SENANAYAKE, J.

This is an appeal from the judgment of the learned District Judge of Colombo dismissing the plaintiff's action.

The plaintiff-appellant instituted this action for the ejection of the defendant-respondent from premises bearing No. 27 1/2, Sir Earnest

de Silva Mawatha, Colombo 7 in terms of the provisions of section 22(2) (bb) (ii) of the Rent Act of 7 of 1972 as amended by 34 of 1976, 10 of 1977 and 55 of 1980. It was specially pleaded that the plaintiff-appellant is the owner of the premises and that he does not own more than one residential premises prior to the institution of the present action. Plaintiff gave notice as required by the Rent Act terminating the tenancy and deposited with the Commissioner of National Housing 5 years rent of the premises for payment to the defendant-respondent.

The defendant-respondent's position was that he was first a tenant of Lalitha Padmini Rajapakse the plaintiff-appellant's mother and at his request he attorned to the plaintiff-appellant from September 1987. He further averred that the plaintiff-appellant was an owner of more than one residential property.

The learned Counsel for the plaintiff-appellant contended that the defendant-respondent did not establish the deed 'VI'. His contention was that the burden was on the defendant-respondent to establish that the plaintiff-appellant was the owner of more than one residential premises. I am unable to accept his contention. The Rent Act specified that no action or proceedings for the ejectment of the tenant in terms of section 22(1) or (2) shall be instituted or entertained by any Court unless where,

- (a) rent has been in arrears for a month after it has become due
- (b) the premises 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.

(bb) This provision is very important in the instant case which reads as "In the case of premises let to a tenant whether before or after the date of commencement of this Act, and where the landlord is the owner of not more than one residential premises".

The burden is laid squarely on the plaintiff-appellant to establish that he has only one residential premises. The plaintiff-appellant had failed to establish that he was only an owner of one residential premises. The learned Counsel contended that the word residential premises must be construed by referring to the provisions of section 2(4) of the Rent Act. His contention was that there was no evidence that residential premises mentioned in VI came under the provisions of

the Rent Act. His contention was on the basis that even if the owner had more than one residential premises and if they were excepted premises yet the owner could maintain the action because he had only one premises which fell within one residential premises as contemplated by section 22(1) (2) (bb) of the Rent Act. I am unable to accept the said contention. This contention is against the intention and the spirit of the Rent Act. If one were to accept this novel concept a landlord who has numerous residential premises which are excepted residential premises, in addition if he was only the owner of one premises which falls within the provisions of section 22(1) (2) (bb) he will be entitled to maintain an action on the grounds of reasonable requirement of the premises for the family. I am of the view that, that contention is without any merit when one examines the definition of residential premises under the Rent Act.

The learned Counsel for the appellant contended that the learned District Judge had erred in holding that the plaintiff-appellant was unable to maintain this action in view of the provisions of section 22(7) of the Rent Act. His contention was that there was not an issue raised by the parties and further contended that the parties have waived their objections. I am unable to accept the said contention. It is an accepted principle that parties cannot contract out side the Rent Act where the premises is governed by the Rent Act. I am of the view that the learned District Judge had come to a correct finding of law. The plaintiff-appellant, in order to maintain this action should have produced in evidence, the deed on which he became entitled to the premises in question to show that it was a gift from the mother. The mother, merely saying that it was gifted by her to the plaintiff-appellant was not sufficient.

I am of the view the learned District Judge had come to a correct determination on the facts. He had not accepted the plaintiff-appellant's mother's evidence. In the circumstances, I do not see any reasons to interfere with the considered judgment of the learned District Judge. I affirm the judgment and decree and dismiss the appeal with costs fixed at Rs. 5200/-.

EDUSSURIYA, J. – I agree.

Appeal dismissed.