

LEELASENA
v.
RANASINGHE AND OTHERS

COURT OF APPEAL.

ISMAIL, J.

C.A. APPLICATION NO. 63/91

RENT BOARD OF REVIEW APPEAL NO. 4426

RENT BOARD OF KURUNEGALA NO. 23/84

NOVEMBER 29, 1994.

Landlord and tenant – Application for declaration of tenancy – Effect of partition decree – Attornment – Licenseeship.

Held:

The rights of a monthly tenant are unaffected by a decree under section 48 of the Partition Act.

Although the documents marked did not refer to a tenancy or payment, the evidence was that as the landlord refused to accept rents after earlier accepting rents for 12 months, these were deposited at the Development Council, Hiripitiya.

Although there was a change after the partition decree, the evidence showed that the petitioner not only acknowledged the ownership of the new owner and paid rent to the Development Council, Hiripitiya when the new owner after having accepted rent for 12 months did not accept the rent. This amounted to attornment. Further it is unlikely that there was only a licenseeship when the tenant was running a business in the boutique room. It is a well-established principle that a tenant who remains in occupation with notice of the purchaser's election to recognize him as a tenant may legitimately be regarded as having attorned to the purchaser so as to establish a privity of contract between them.

Cases referred to:

1. *Britto v. Heenatigala* (1956) 57 N.L.R. 327.
2. *Ranasinghe v. Marikar* (1970) 73 N.L.R. 361.
3. *Lalitha Perera v. Padmakanthi* (1987) 2 Sri LR 1, 5.
4. *Alles v. Krishnan* (1952) 54 N.L.R. 154.
5. *Fernando v. Wijesekera* (1969) 73 N.L.R. 110.
6. *De Alwis v. Perera* (1951) 52 N.L.R. 433.

APPLICATION for writ of certiorari to quash the decision of the Rent Board of Review.

S. Sinnathamby for petitioner.

P. A. D. Samarasekera P.C. with *Upali de Almeida Gunaratne* for 7th respondent.

Cur. adv. vult.

January 23, 1995.

ISMAIL, J.

The petitioner who was occupying premises No. 17, Kumbukgeta Road, Nikadalupotha filed an application dated 24.4.84 in the Rent Board, Kurunegala, seeking a declaration of tenancy, the determination of the authorized rent and an order to effect repairs to the said premises. The Rent Board after an inquiry declared by its order dated 10.11.1986 that the petitioner is the tenant of the premises. The 7th respondent appealed to the Rent Board of Review which, by its order dated 29.9.90, set aside the order of the Rent Board and held that the petitioner is not the tenant of the said premises.

The petitioner has now sought a writ of certiorari to quash the said order of the Rent Board of Review, annexed to the petition marked X.

The case for the petitioner before the Rent Board was that he commenced his tenancy on 10.5.60 under Panis Pitigala. He produced rent receipts marked A1 – A4 in proof of having paid rents to him in May '60, December '61, January '71 and March '77. Panis Pitigala himself gave evidence and acknowledged that the petitioner was his tenant and that he paid the rent to him. The finding of the Rent Board was that the petitioner was the tenant of Panis Pitigala.

It is common ground that subsequently, in about 1977, the 7th respondent derived title to the premises by virtue of a final decree entered in a partition case. The petitioner then commenced paying rent to the 7th respondent. Having accepted the rent for 12 months, he refused to accept rent from him thereafter. The decree entered in the partition case was not produced either before the Rent Board or

the Board of Review. The petitioner has objected to the decree, 7R1, now sought to be produced in these proceedings. I therefore do not propose to refer to the terms of the said decree and the circumstances in which it came to be entered. The Rent Board took the view that a partition decree does not extinguish tenancy rights.

The petitioner also produced rent receipts marked A6 to A12 in proof of having deposited the rent and the arrears of rent at the Development Council, Hiripitiya, from 1982 onwards. The Rent Board took this fact also into consideration and held that the petitioner is the tenant of the premises.

The 7th respondent produced two notes dated 14.8.77 (V1) and April '83 (V2) to show that the petitioner was in permissive occupation of the premises as a mere licensee. The Rent Board having considered these two documents has stated that it is for a court of competent jurisdiction to determine the legal effect of these documents and as to whether they had the effect of terminating the tenancy of the petitioner.

The 7th respondent in his appeal before the Board of Review attempted to take up the position that Panis Pitigala was a trespasser who had no rights to the land and that he was not his predecessor in title. Panis Pitigala was not cross-examined on these matters when he gave evidence. There is therefore no evidence at all as to the nature of the right, title or interest Panis Pitigala had in the premises which he admittedly let out to the petitioner and which continued to be occupied by him for a period of sixteen years. The Rent Board proceeded to make its order on the basis that Panis Pitigala was the landlord of the petitioner.

The submission of learned counsel for the petitioner was that the Rent Board of Review failed to take into consideration the provisions of section 48(1) of the Partition Law, No. 21 of 1977, in terms of which the monthly tenancy of the petitioner was statutorily protected despite the partition decree. The Board of Review has noted that the question arose as to whether the petitioner's tenancy continued after the 7th respondent became the absolute owner of the premises by virtue of the partition decree but it did not express its finding on this matter. It

proceeded to hold that the petitioner had not attorned to the 7th respondent.

The concluding sentence of section 48(1) of the Partition Law No. 21 of 1977, which deals with the finality of the interlocutory and final decrees of partition provides that "the right, share or interest awarded by any such (partition) decree shall be free from all encumbrances whatsoever other than those specified in the decree." "Encumbrance" in this context is declared to mean "any mortgage, lease, usufruct, servitude, life interest, trust or any interest whatsoever howsoever arising except a constructive or charitable trust, a lease at will or for a period not exceeding one month."

In *Britto v. Heenatigala* ⁽¹⁾ it was held that the statutory protection of a tenant under the Rent Restriction Act is not automatically extinguished if the leased premises are purchased either by co-owner or by a third party in terms of a decree for sale under the Partition Ordinance. This judgment was approved in *Ranasinghe v. Marikar* ⁽²⁾. The majority of the Divisional Bench held that the rights of a monthly tenant are unaffected by a decree under section 48 of the Partition Act, whether those rights are specified in the decree or not.

There was no evidence as to the nature of Panis Pitigala's title or as to whether he was a co-owner of the said premises. The Rent Board of Review should have proceeded in the circumstances to hold that section 22 of the Rent Act protected the tenancy of the petitioner despite the 7th respondent having derived title to it under a partition decree.

The next submission on behalf of the petitioner was that the Board of Review erred in holding that the petitioner has not attorned to the respondent. The evidence of the petitioner was that he paid rent to the 7th respondent for a period of 12 months after he became the owner of the premises. He postponed giving receipts stating that the receipt book had not been printed and did not issue receipts and he finally refused to accept rent from the petitioner. The petitioner produced a letter dated 26.10.82 (A5) from the Rent Board, Kurunegala, which referred to a complaint made by him and instructed him to pay the rent and the arrears to the Development

Council, Hiripitiya. The petitioner has thereafter paid rents to the Development Council. The receipt A6 is for the payment of rent from February '79 to April '79, A7 for May '79 to June '80, A8 for July '80 to December '80, A9 for January '81 to July '84, and A10 for August '84. The 7th respondent must be presumed to have known that the petitioner was depositing the rent at the Development Council as a copy of the letter A5 was sent to him by the Council.

The Rent Board of Review has held that the documents V1 and V2 show that the petitioner was in permissive occupation of the premises as a licensee of the petitioner. The note V1 written in August '77 shows that the petitioner has acknowledged that the 7th respondent has become the owner of the boutique room in which he is carrying business and he has expressed his willingness to leave the premises on being given three months notice. The next document V2 is undated but it has been written in April '83, five years after V1, similarly acknowledging that the 7th respondent has become the owner of the premises and that he would leave the premises 8 months later at the end of that year. The Rent Board of Review has held that these two documents negate the existence of a tenancy as they do not refer to a tenancy or to the payment of rent. These two documents are not letters addressed to the 7th respondent or to any other person but are statements of the petitioner, one at or about the time the 7th respondent became the owner of the premises and the other five years later while the petitioner continued to be in occupation and after he commenced depositing the rent at the Council.

The term attornment has been judicially defined "as the act of the tenant putting one person in place of another as his landlord." Seneviratne, J. added in *Lalitha Perera v. Padmakanthi* ⁽³⁾. "This means that in any attornment the tenant acknowledges the landlordship of a person other than his original landlord." The principle has also been enunciated that the previous contract of tenancy does not survive upon attornment – *Alles v. Krishnan* ⁽⁴⁾, *Fernando v. Wijesekera* ⁽⁵⁾.

In the present case, however, as noted above the tenancy of the petitioner has continued by operation of law under the 7th

respondent. The documents V1 and V2 show that a privity of contract has been established between the petitioner and the 7th respondent. The petitioner has acknowledged the ownership of the 7th respondent and the two documents do not show that the petitioner has refused to pay rent or to attorn to him. The petitioner occupied the premises for about sixteen years under the previous landlord on payment of rent and it is unlikely that the petitioner who was running a business in the boutique room would have been permitted to occupy it free of rent under the new owner. Wijayatilake, J. in (1968) 73 N.L.R. 430 at 432 stated, following Gratiaen J. in *De Alwis v. Perera* ⁽⁶⁾ as follows: "Thus it would seem that it is a well-established principle that a tenant who remains in occupation with notice of the purchaser's election to recognize him as a tenant may legitimately be regarded as having attorned to the purchaser so as to establish a privity of contract between them." The Rent Board of Review has failed to consider the evidence of the petitioner that he paid rent to the 7th respondent for a period of 12 months and that upon his refusal to accept the rent that he commenced depositing the rent at the Development Council with the knowledge of the 7th respondent. The Rent Board of Review has erred in law in coming to the finding that the petitioner has not "legally" attorned to the 7th respondent, whereas the evidence shows that the petitioner can be legitimately regarded as having attorned to the 7th respondent. The Rent Board of Review has also erred in law failing to consider the effect of the provisions of section 48(1) of the Partition Law No. 21 of 1977 which statutorily protected the tenancy of the petitioner. For these reasons the determination of the Rent Board of Review dated 29.9.90 is quashed.

The application is allowed with costs fixed at Rs. 525/- payable by the 7th respondent.

Certiorari issued.