HEMACHANDRA
v.
HINNI APPUHAMY

COURT OF APPEAL
ABDUL CADER, J., AND H.A.G. DE SILVA, J.
C.A.(S.C.) 529/73. (F)
DC. KANDY 358/RE.
MARCH 15, 16, AND 17, 1982.

Landlord and tenant – Rent and ejectment – Part of excepted premises let and assessed later – Is part let exeepted premises? – Applicability of Rent Act.

The plaintiff filed action for ejectment of the tenant on the ground that the premises let were excepted premises. The premises let were a part of a larger premises. The larger premises were assessed on 1.1.68 while the part that was let was assessed for the first time in 1970 as a separate premises. The defendant contended that since the premises had been assessed separately in 1970 for the first time and since the annual value assessed was less than the relevant [illegible] the Rent Act applied.

Held -

That in this case the premises let to the defendant had been separately assessed for the first time in 1970 the assessment brings the premises within the ambit of the Rent Act.

Cases referred to:

(1) *Sally Mohamed v. Syed Mohamed (1962) 64 N.L.R. 486*

(2) *Premadasa v. Atapattu (1968) 71 N.L.R. 62*

(3) *Plate v. Ceylon Theatres Ltd. (1974) 75 N.L.R. 128.*

APPEAL from judgment of the District Court of Kandy.

C. Ranganathan, Q.C. for the appellant.
H. W. Jayewardene, Q.C., for the respondent.

Cur.adv.vult.

May 27, 1982

ABDUL CADER, J

The plaintiff filed action to eject the defendant on the ground that the premises that the defendant occupied as his tenant were excepted premises. The defendant contended that though the premises were excepted premises in 1968, the premises in question being a part of a larger premises had been assessed as a separate unit for the first time in 1970, and this action having been filed *after* such separate assessment, and the latter assessment being less than the assessment required to make this new unit "excepted premises", the plaintiff cannot maintain the action on the basis of excepted premises. It was conceded that the premises let to the defendant were part of a larger premises which were excepted premises and the premises let to the defendant was given a separate assessment in 1970 which was less than the amount required to make the premises excepted premises. The learned District Judge held in favour of the defendant.

However, he gave Judgment for the plaintiff for the reason that the plaintiff had appealed against the separate assessment in 1970 and, therefore that assessment which brought this premises within rent control was sub judice and, therefore, it is the 1968 assessment that applies under which the premises were admittedly excepted premises (Issue 9).

Before us, Mr. Renganathan for the defendant-appellant submitted that the learned District Judge had misdirected himself as the rights of parties are to be decided as on date of action and the plaintiff had, in fact, filed that action after he filed this action and in any event even that action has been since decided against the plaintiff and, therefore, issue 9 should be decided in favour of the defendant, and the plaintiff's action dismissed. If that action was reckoned for the decision of this case, equally the dismissal of that action, too, should be reckoned at this stage to answer issue 9 in favour of the defendant. But I am of the view that action should not have been taken into consideration altogether as it was the assessment as on the date of action that was relevant. Therefore, if the plaintiff wished to avail himself of the benefit of the appeal he should have first obtained a revision of the assessment before he instituted this action. In fact, Mr. Jayewardene did not make any serious attempt to deny the validity of the defendant's submissions on this point.

Mr. Jayewardene, however, contended that the plaintiff is entitled to succeed for a different reason. He referred us to amendment to Regulation 2 in the schedule to the Rent Act (Chapter 274) by Gazette Notification of 9.1.69. He submitted that the second limb "assessment ..... for the first time" would not refer to any premises which had been already assessed on or before 1.1.68 (as for instance a new building) and this entire building having been assessed in 1968, the subsequent assessment in 1970 of that part of the premises let to the defendant will have no relevance as it being a part, has been assessed as a part of the whole premises.

The regulations as amended reads as follows:-

1. .....
2. "Any premises ..... shall be excepted premises for the purposes of the Act, if being premises of the description mentioned in column 2, the annual value thereof as specified in the assessment made for the purposes of any rates levied by any local authority under any written law and in force on the first day of January, 1968, or where the assessment of the annual value thereof is made for the first time after the first day of January, 1968, the annual value as specifed in the later assessment, exceeds the amount specified in the corresponding entry in column 3."

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A careful study of these regulations indicates that the submission that the latter part of the amended regulation applies to new buildings cannot be sustained. It is my view that regulation 2 refers to the first assessment of the premises let as a separate entity for the first time though these premises may have been assessed earlier as part of a larger premises earlier.

In the case of *Sally Mohamed* vs *Syed Mohamed* (1), H.N.G. Fernando, J. held that until the Rent Board decided otherwise, despite a later separate assessment, the 1941 joint assessment of the two premises let would be the yardstick for deciding the standard rent. This decision was not only obiter, but was also dissented from in *Premadasa* vs. *Attapattu* (2) where Sirimane, J. said that the facts can be distinguished "though with respect, I would have been inclined to take a different view." He made the distinction that the premises in question in that case were, in fact, in existence *as separate entities* bearing separate assessment numbers and had been assessed (though in conjunction with other premises) in 1941. De Kretser, J. was more forthright. He quoted section 7 of the Rent Act and pointed out that there is only one assessed premises despite several parts of it being let, and raised the question "Why is there a difference when the several parts are assessed"? and gave the answer that "they became separate premises." He went on to say: "The resulting position is then that a number of new premises take the place of the old and the basis of the authourised rent for each of them is the amount of annual value fixed when they are assessed as separate premises for the first time." He further stated on page 66 as follows:-

> "I entirely agree that if two parts have been assessed jointly whether before or after 1941, that the authorised rent would have to be calculated in terms of section 5 (1) (a) by reference to that assessment. But I cannot agree that if thereafter separate assessments are made for each part that it is the Board that would have to fix a standard rent for each or both parts. It will be seen that the proviso makes provision only for application by a tenant for the fixing of a fair rent. That pre-supposes that otherwise the tenant will have to pay a rent which is in accordance with the new assessment. If he thinks that rent unfair and unreasonable, he can apply to the Board and if the Board agrees with him, the Board will fix a rent which it thinks is fair and reasonable in lieu of the rent calculated on the basis of the assessment now made for the first time.

will be noted no provision is made for a reference to the Board by a landlord – presumably because he has been heard by the assessors and is thereafter bound by the assessment made for the premises. It is my view that when a premises, that is in terms of the definition of premises, a building or part of building, has been assessed in 1941 that the authorised rental has to be calculated in terms of that assessment. If it is assessed for the first time after 1941 then that first assessment is the one which governs the authorised rent, but that is subject to the right of a tenant to get a rent which is in the opinion of the Board fair and reasonable fixed in lieu of such authorised rent."

In that case, the premises had been assessed as No.53 prior to November, 1941. For the first time is 1948 , it was separately assessed as 53. What was let to the defendant was 53. The Court held that the separate assessment or 53 in 1948 attracted to it the 1948 assessment for the purpose of determining the standard rent of premises 53. The facts of that case are very similar to the facts of this case. "11A" was not in existence till 1970 though it formed part of the building assessed in 1941 and it was in 1970 that "11A" became a separate entity and was first assessd as such.

Mr. Jayewardene contended that these decisions, especially *Premadasa v. Atapattu* (2), will have no application for the reason that the Legislature has now fixed 1st January, 1968, as the date for consideration whether the premises are excepted premises or not. He submitted that the two earlier decisions reported in 59 N.L.R. 525 and 69 N.L.R. 445, had decided that the words "for the time being" in Regulation 2 referred to the date of action, and since these words were also open to some other constructions, the Legislature set the matter at rest by fixing a definite date 1.1.68. I personally cannot see any difference except that instead of the assessment being related to the date of action prior to the amendment of Rule 2, the amendment has now fixed the assessment of 1.1.68 as the relevant assessment for deciding the question whether the premises are excepted or not. However, since Counsel depended very strongly on the Judgment in *Plate* vs *Ceylon Theatres Ltd.* (3) and the same case in appeal reported in 76 N.L.R. 97, I shall consider these decisions at some length. The 75 N.L.R. Case was decided on 30th December, 1971. This amendment came on 9.1.69. Therefore, 1.1.68 was not the relevant date for the decision as regards excepted premises.

Samerawickrame, J. stated as follows:-

> "Once a premises were excepted premises on the application of that test there is no support to be found in the Act for the position that a part of those premises could be premises to which the Act applies unless *that part was* separately assessed."

Mr. Renganathan does not dispute the contention that a part of the premises which is not separately assessed would also be excepted premises if the entire premises are excepted premises, but he contends that when that part is separately assessed and if it is at less than the relevant amount, then that part will fall within the Rent Act. This is exactly what Samerawickrame, J. stated in the passage I have quoted above. Samerawickrame, J. went on to say further:

> "There is nothing in the Act to suggest that the unit of letting is to be the premises."

That is exactly what Mr. Renganathan submitted to us. He has submitted that it is not the unit of letting that is relevant, but the unit of assessment, and in this case the premises numbered 11/A was assessed as a separate unit for the first time in 1970. The last part of Rule 2 is to the effect that where the assessment is made for the first time after the first day of January, 1968, the annual value should exceed the amount specified in the corresponding entry in column 2 to make the premises excepted premises. There is, no doubt, that the assessment of 11/A is well below the assessment required to make it excepted premises.

Therefore, the Judgment of Samerawickrame, J. in the 75 N.L.R. Case (3) is of no assistanceto Counsel for the respondent.

I shall now proceed to consider the same case in appeal reported in the 76 N.L.R., *Plate Ltd. v. Ceylon Theatres Ltd.*, 97, another judgment on which Mr. Jayewardene strongly relied. This was on appeal to the Court of Appeal from the judgment quoted in 75 N.L.R. which I have already considered. I do not find anything in the judgment of the Court of Appeal to support the contention of Counsel. In that case, that part of the premises which had been let to the defendant had not been assessed as a separate entity. Counsel had contended, therefore, that the premises referred to in section 2(4) of the Act should be construed to mean the "entity which is the subject matter of the contract of tenancy and where that entity

has not been separately assessed by the local authority for the purpose of rates it will not fall within the category of "excepted premises", and will, therefore, be "premises to which the Act applies."

Counsel further contended that the Courts in Ceylon had consistently applied what he described as "the contract of tenancy test" to determine whether "a particular premises was subject to the operation of the Act or exempted therefrom and that in applying the regulation in the Schedule in terms of section 2(5) to determine whether any entity let is excepted premises the Court should not proceed to apply the test of annual value under column 3 before deciding upon the nature of the premises under column 2, and that this can be done only with reference to the entity let. The Court while holding that a tenancy action must necessarily relate to the subject matter of the tenancy and in order to decided whether the entity let is excepted premises or not the Court, of course, considers the nature of the premises let but it does not follow that the word "premises" in the Act is equivalent to the entity let.

Counsel relied on this finding and urged that, therefore, this Court will not consider the entity "let" as a criterion for deciding whether the premises are subject to the operation of the Act or exempted therefrom. I find it difficult to agree with this submission.

Siva Supramaniam, J. stated specifically as follows:-

> "If it was the intention of the Legislature that where any premises whether excepted premises or not, are let in parts *not separately assessed*, each such part should be deemed to be premises to which the Act applies, one would have expected express provision to be made to that effect.
>
> "Where the Act refers to "premises to which the Act applies" and to those which are "excepted premises", it does so with reference to the annual value as assessed by the local authority for the purpose of levying rates."

Later on he went on to say:

> "Section 5(2) of the Act would therefore have no application to the entity let to the appellant, as no part of premises No.267 remained unassessed. *If the portion let to the appellant had been separately assessed* by the Municipality, there would have been a proportionate reduction of the annual value of the premises No. 267. If the appellant company had desired to treat the portion let to it as separate premises it was open to

it to have applied to the Municipality under the provisions of the Municipal Councils Ordinance to assess it separately on the basis of the use to which that part was put."

No doubt, this statement was made for the purpose of deciding the dispute in that case whether the premises was used for residential or business purposes, but the view expressed is equally apt in respect of the dispute in this case. It is very clear that if there had been a separate assessment of the premises let to the defendant-appellant in that case, the Court would have held whether that portion let to the defendant was excepted premises or not by reference to the assessment of that separate portion. But, since there has been no separate assessment, the Court held that the entire premises having been assessed as one entity, the portion let to the defendant being a part of the whole was also excepted premises. But in this case the premises let to the defendant have been separately assessed and that assessment brings the premises within the ambit of the Rent Act. I, therefore, come to the conclusion that Counsel's contention is untenable and the defendant is entitled to judgment in his favour.

The appeal is, therefore, allowed. The plaintiff's action is dismissed with costs in both Courts.

H.A.G. DE SILVA, J. – I agree.

Appeal allowed.