

**WEERASURIYA
v.
MANAMPERI**

COURT OF APPEAL
WIJAYARATNE, J., AND EDUSSURIYA, J.,
C.A. LA NO. 401/86(F):
D.C. COLOMBO 5113/RE
20 AND 22 JANUARY 1992.

Landlord and tenant – Notice – Rent Act, sections 22(1) (bb), 22(b), 22(c) and 36.

Where certain premises were rented by the father of the defendant in 1968 and after his death in February 1980, the defendant became tenant by operation of law under section 36 of the Rent Act and where the plaintiff after giving six months' notice brought an action for ejection on the ground of reasonable requirement under section 22(1) (bb) and it was contended on behalf of the

defendant that the action should have been filed under section 22(b) with one year's notice given under section 22(6) -

Held :

That since the defendant became a statutory tenant by operation of law and there was no fresh contract of tenancy between the parties, it could not be said that the premises had been let after the commencement of the Rent Act (i.e. 1.3.72). The action has been properly brought under section 22(1) (bb) after giving six months' notice.

APPEAL from judgment of the District Court of Colombo.

Cases referred to:

(1) *Sriyani Peiris v. Mohamed* (1986) 2 Sri LR 385.

(2) *Miriam Lawrence v. Arnolda* (1984) Vol. 1 Piv. BA Law Journal P. 136.

Ikrant Mohamed. with *Lal Matarage* for defendant-appellant.

T. B. Diliminu with *Miss R. Malalasekera* for plaintiff-respondent.

Cur adv vult.

2nd April, 1992.

WIJEYARATNE, J.

The plaintiff filed this action on 27.1.82 under section 22(i) (bb) of the Rent Act for the recovery of possession of premises No. 9 Kirimandala Mawatha, Nawala, on the ground that it was reasonably required for his own occupation and that of his family.

It was averred in the plaint that the standard rent of the premises was below Rs. 100 and they were the only residential premises owned by him. It was also averred that notice dated 27.7.80 to quit on or before 31.12.80 had been sent to the defendant and also that the notice of this action had been given to the Commissioner of National Housing as required by section 22(1A) of the Act.

There was a claim of arrears of rent in a sum of Rs. 1235 upto December 1981 and damages at Rs. 95 per month till possession was restored.

The defendant filed answer denying the right to eject him. The answer stated that G. B. Weerasuriya, the father of the defendant-appellant, was the original tenant, that he had paid the rent regularly at Rs. 121/- per month, that he died on 22.2.80, and that the defendant-appellant who was his son and who was residing on the said premises, became its tenant from 1.3.80. It was also stated in the answer that the authorised rent was Rs. 82/45 and that Rs. 627/- had been charged as excess rent and this amount along with a sum of Rs. 4000/- spent for urgent repairs had been claimed in reconvention.

At the trial certain admissions were recorded and the following issues were raised by the parties :-

- (1) Is the plaintiff the owner of any house other than the premises in suit ?
- (2) Are the premises in suit reasonably required for plaintiff for occupation as residence ?
- (3) By notice to quit dated 26.6.80 has the plaintiff given 6 months' notice of termination of the tenancy of the defendant ?
- (4) Has the notice of this action been given to the Commissioner of National Housing ?
- (5) If issues 1 to 4 are answered in favour of the plaintiff, is the plaintiff entitled to a decree of ejectment of the defendant under the provisions of section 22(1) (bb) of the Rent Act ?
- (6) What sum is due to plaintiff by way of arrears of rent and damages ?
- (7) Can the plaintiff have and maintain this action on the alleged notice to quit in view of the facts averred in paragraph 6 of the plaint ?

After trial the learned Additional District Judge by his judgment dated 24.9.86 entered judgment for the plaintiff as prayed for, from which judgment and decree this appeal has been filed.

The evidence reveals that the defendant-appellant's father G. B. Weerasuriya had taken the premises on rent in 1968 from Hemalatha Manamperi. She died in May 1971 and her son M. Manamperi succeeded as landlord. After the judgment in this case was given in the District Court, the plaintiff-respondent M. Manamperi died and his widow Swarna Manamperi has been substituted.

G. B. Weerasuriya died in February 1980 and his son the defendant-appellant succeeded to the tenancy by law under section 36 of the Rent Act.

The defendant-appellant also died pending the appeal and his widow Lalitha Padmini Weerasuriya has been substituted in his place.

At the hearing, Mr. Ikram Mohamed for the defendant-appellant submitted that the defendant-appellant became the tenant under the plaintiff only from 1.3.1980 after the defendant-appellant's father had died in February 1980. Therefore Mr. Ikram Mohamed submitted that the premises had been let to the defendant-appellant in March 1980, which is after the date of commencement of the Rent Act, namely 1.3.1972, and hence the plaintiff-respondent could not maintain this action.

In section 22(i) (bb) it is laid down that possession could be recovered of such premises "let to the tenant prior to the date of commencement of this Act (which) 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."

Therefore he submitted that the letting to the defendant-appellant took place in March 1980, which was after the date of operation of the Act and hence the plaintiff-respondent cannot avail himself of section 22(i) (bb).

He relied on the judgment of this Court in the case of *Sriyani Peiris v. Mohamed*⁽¹⁾ where it was held that section 22(i) (bb) necessarily refers to the "current" landlord who instituted the action for ejectment and since the tenancy of the "current" landlord commenced after the

operative date of the Rent Act (namely, after 1.3.1972), section 22(6) of the Rent Act applies and one year's notice is required to terminate a tenancy and a notice of six months was insufficient.

On the other hand Mr. T. B. Dilimuni for the plaintiff-respondent submitted that the defendant-appellant has merely continued the tenancy of his father by operation of law under section 36 of the Rent Act and there is no fresh contract of tenancy entered into between the defendant-appellant and the plaintiff-respondent. He distinguished the case of *Sriyani Peiris v. Mohamed (supra)* from the facts of this case as there was no statutory provision in the Rent Act for the succession of one landlord on the death of the previous landlord (unlike in the case of a death of a tenant where specific provision is provided for the continuance of the tenancy). He strongly relied on the fact that there was no fresh contract of tenancy between the plaintiff-respondent and the defendant-appellant.

Mr. Dilimuni relied on the judgment of the Supreme Court in the case of *Miriam Lawrence v. Arnolda*⁽²⁾.

In this case Ismail J. stated as follows :-

"... it was the duty of the Trial Judge to have determined whether the premises had been let prior to 1.3.72 or subsequent to that date. If the premises had been let after that date clearly the provisions of the Act would not apply.

It is also in evidence that the defendant's father was the original tenant of this premises since 1914 and the defendant had become the tenant of the premises only after the father's death in August 1972. Therefore, it was necessary for Court to have considered whether the defendant became a statutory tenant after the death of his father or whether there was a fresh contract of tenancy between the plaintiff and the defendant. No issues have been framed to this effect and therefore there is no determination as to whether the defendant was a statutory tenant succeeding to his father's tenancy of the premises in suit on the death of the father under the provisions of the Rent Restriction Ordinance or whether he became the tenant on a fresh contract of tenancy."

This is a Supreme Court decision which is binding on this Court. Therefore it is necessary for a court of law to consider whether the defendant-appellant became a statutory tenant after the death of his father, or whether there was a fresh contract of tenancy between the plaintiff-respondent and the defendant-appellant. It is clear the defendant-appellant became a statutory tenant under section 36 of the Rent Act, there being no fresh contract of tenancy between the parties. Further it is not possible to say that the premises have been let to the tenant after the date of commencement of this Act, i.e. after 1.3.72, for the defendant-appellant to insist on one year's notice. There was no letting of these premises to the defendant-appellant after 1.3.72; the defendant-appellant succeeded to the tenancy by operation of law under section 36 and became a statutory tenant.

Therefore I am unable to accept the argument adduced by learned counsel for the defendant-appellant. I hold that the six months' notice given is valid and that all the other ingredients necessarily have been established as held by the learned Additional District Judge.

I therefore dismiss the appeal with costs payable by the defendant-appellant to the plaintiff-respondent.

EDUSSURIYA, J. – *I agree.*

Appeal dismissed.