

ROSHAN PEIRIS

v.

EDIRISINGHE

SUPREME COURT.

SHARVANANDA, C.J., ATUKORALE, J. AND H. A. G. DE SILVA, J.

S.C. APPEAL No. 20/85.

C.A. APPEAL No. 182/80(F).

D.C. COLOMBO No. 3139RE.

FEBRUARY 25, 1986.

*Landlord and Tenant—Suit for ejectment on grounds of reasonable requirement—Premises comprising two lots (Lot 1 and Lot 2)—Landlady at conclusion of trial limiting relief claimed to Lot 2—Is there then an alteration of scope of action?—S. 22(1)(bb) of Rent Act No. 7 of 1972 as amended by Rent (Amendment) Law No. 10 of 1977—Ss. 34 and 207 of Civil Procedure Code.*

RP sued her tenant PE to whom she had let premises comprising two lots (Lot 1: annexe, lavatories; Lot 2: main house and kitchen) on the ground that she reasonably required them for her own occupation after giving six months' notice—the standard rent being less than Rs. 100 and the rent paid being Rs. 102/60 per month. A copy of the notice was sent to the Commissioner of National Housing.

At the conclusion of the recording of evidence at the trial RP's counsel submitted to court he was limiting the relief sought to ejection of the tenant only from Lot 2. The District Judge in answering the issue of reasonable requirement held that Lot 2 is reasonably required by RP and the members of her family for occupation as a residence and ordered that writ was not to issue until the Commissioner of National Housing intimated to court that alternate accommodation was available to PE who however appealed from the judgment.

RP moved for writ of execution and at the inquiry agreed to hand over possession of Lot 2 on or before 1.1.1985 without prejudice to his appeal. Prior to 1.1.1985 (on 14.12.1984) the Court of Appeal taking the view that by limiting the relief claimed to Lot 2 the plaintiff had altered the scope of her action, set aside the judgment of the District Court and sent the case back for fresh trial. On an appeal being preferred to the Supreme Court—

Held—

(1) There was here only a single contract of tenancy in respect of one premises consisting of Lots 1 and 2.

(2) After termination of the tenancy by notice the landlady was entitled to sue her tenant in ejection from the entirety of the premises and recover possession thereof but there is no rule of law which obliges the landlady to ask for and obtain an order of ejection of the tenant from the whole of the premises. Sections 34 and 207 of the Civil Procedure Code envisage a situation where it is open to the landlady to restrict the claim for ejection to a portion of the premises. By this the court was not being invited to decide the issue of reasonable requirement on the basis that a portion and not the entire premises was reasonably required. The basic issue is whether the premises in suit (Lots 1 and 2) are reasonably required for the occupation of RP and her children but the court is not inhibited from entering the decree of ejection for only a portion (Lot 2).

(3) The facts show that the issue of reasonable requirement both on the basis of financial considerations and family requirements had to be and was rightly answered in favour of RP the plaintiff. Further eviction was not being sought from the annexe occupied by PE and writ would issue only upon the Commissioner of National Housing finding alternate accommodation. The law precludes the tenant from canvassing the adequacy or suitability of the alternate accommodation provided by the Commissioner.

APPEAL from judgment of the Court of Appeal.

*H. L. de Silva, P.C. with S. Mahenthiran for the appellant.*

*P. A. D. Samarasekera, P.C. with Gamini Jayasinghe and G. L. Geethananda for the respondent.*

April 3, 1986.

ATUKORALE, J.

The appellant is the landlord and the respondent the tenant of residential premises bearing assessment No. 11, 19th Lane, Colombo 7, to which the provisions of the Rent Act No. 7 of 1972 apply. The premises consist of a main house, a detached kitchen, an annexe (also detached) from the main house and two lavatories together with the land appurtenant thereto. It is depicted as Lots 1 and 2 in plan P3 and is of the extent of 27.40 perches. According to the plan the main house and the kitchen fall within Lot 2 whilst the annexe and the lavatories fall within Lot 1. There is nothing physical on the ground to demarcate the common boundary between Lots 1 and 2. The main house contains two bedrooms, a sitting room, a verandah and a bathroom but no lavatory. The annexe contains one bedroom and a small room. The standard rent of the premises does not exceed Rs. 100 per month, the actual rent paid by the respondent to the appellant being Rs. 102/60 a month.

The appellant gave the respondent 6 months' notice to quit the premises on the ground that she required the same for her own occupation. A copy of this notice was sent to the Commissioner of National Housing. The respondent was required to vacate the premises on or before 30.6.1978. He failed to do so. On 23.11.1978 the appellant filed the present action in the District Court to have the respondent ejected from the premises. In the plaint she pleaded, inter alia, that she reasonably required the premises for her own and her family's occupation as a residence in terms of s.22(1)(bb) of the Rent Act as amended by the Rent (Amendment) Law, No.10 of 1977. If she succeeded in establishing this ground to the satisfaction of court *she was entitled to a decree for ejection of the respondent from the premises as prayed for by her in her prayer to the plaint.* I stress these words for the reason that although she was entitled to an order of ejection of the respondent from the entirety of the premises, there is, in my view, no legal impediment to limiting her claim for ejection to a portion of the premises. However no writ of execution of the decree could be issued by the court until after the Commissioner of National Housing had notified court that he was able to provide alternate accommodation to the respondent-s.22(1C) of the Rent Act as amended.

The respondent in his answer denied the various averments set out in the plaint. At the trial only two issues were raised, both on behalf of the appellant:—

1. Are the premises in suit reasonably required for occupation as a residence for the plaintiff (the appellant) and the members of her family?
2. If issue 1 is answered in the affirmative, is the plaintiff (the appellant) entitled to a decree for ejectment?

The appellant and the respondent gave evidence but called no witnesses. At the conclusion of the evidence learned counsel appearing for the appellant in the trial court stated to court that the appellant was seeking ejectment of the respondent from Lot 2. In the course of his judgment the trial judge answered the issues in the following manner:—

1. Lot 2 in extent 13.50 perches depicted in plan P3 is reasonably required for occupation as a residence for the appellant and the members of her family.
2. Yes.

Upon this basis he entered judgment in ejectment of the respondent from Lot 2 “which is a portion of assessment No. 11, 19th Lane, Kollupitiya” and for damages in a sum of Rs. 102/60 cts. from 1.1.1980 until vacant possession was given. He directed that writ was not to issue until the Commissioner of National Housing intimated to court that alternate accommodation was available to the respondent.

The respondent appealed therefrom to the Court of Appeal. Pending the appeal, an application was made by the appellant to execute the decree after the Commissioner of National Housing notified the District Court that he was able to provide alternate accommodation to the respondent. At the inquiry into this application the respondent agreed to hand over possession of Lot 2 on or before 1.1.1985 without, of course, prejudice to his rights in appeal. Prior to that date, however, on 14.12.1984 the Court of Appeal after hearing the appeal which was accelerated at the instance of the respondent made order allowing the appeal, setting aside the judgment of the District Judge and remitting the case to the District Court for a fresh trial. The Court of Appeal seems to have taken the view that the statement made by

learned counsel for the appellant in the trial court at the conclusion of the evidence showed that the appellant was "limiting the scope of the action to one lot involved, that is Lot 2 in premises No. 11". The Court held that the intimation to court by learned counsel appearing for the appellant that she was seeking ejection of the respondent only from Lot 2 was belated and would have resulted in prejudice to the respondent in his defence. In remitting the case to the District Court for a fresh trial the Court commented that at the new trial one issue, amongst others, could be in regard to the question of the reasonable requirement of Lot 2 for the occupation of the appellant and the members of her family, subject to whatever defences the respondent may take thereto. The Court, in conclusion desisted from making an order for costs against the appellant "as the learned Judge has accepted that the reasonable requirement of the plaintiff (the appellant) and her family for the occupation of the premises is greater than that of the defendant (the respondent) and as the plaintiff has shown that great hardship is caused to her by paying a high rent to a flat in which she lives while having her own premises which she is unable to get from the defendant". From the judgment of the Court of Appeal the appellant has appealed to this court.

It is clear that in the instant case there was a single contract of tenancy in respect of one premises consisting of lots 1 and 2. Under the common law a monthly tenancy could be terminated upon a month's notice. If on the expiration of the period of the notice the tenant failed to vacate the premises, the subject matter of the tenancy, the landlord is entitled to sue the tenant in ejection from the premises, i.e. the entirety of the premises let to the tenant, and to recover possession thereof. But there is, in my view, no rule of law either under the common law or under our substantive or procedural law which obliges the landlord to ask for and obtain an order of ejection of the tenant from the whole of the premises. S. 34 and the explanation to s. 207 of our Civil Procedure Code seems to militate against such a contention. It is open to the landlord in such a case to restrict his claim for ejection to a portion of the premises. Nor is there anything in s. 22 of the Rent Act as amended which is inconsistent with this legal position. That section forbids the institution of and takes away the jurisdiction of the court to entertain an action for the ejection of a tenant of a certain class of premises to which the Act applies except upon certain grounds specified therein. Once the landlord establishes the existence of any of those grounds he is entitled to a decree of ejection of the tenant from the premises. But

it does not affect or curb the right of the landlord to ask for and obtain from court a decree of ejection not from the whole but from a portion of the premises let to the tenant. Whatever the consequences of restricting his claim for ejection may be to the landlord, the court is not inhibited from entering a decree for a portion of the premises as prayed for by the landlord.

The statement made by counsel for the appellant in the trial court after the conclusion of the evidence is that the appellant is seeking the ejection of the respondent from Lot 2. On the face of the statement it would appear that the appellant was inviting the court, in answering the consequential issue No. 2, to restrict the order of ejection to Lot No. 2. *Prima facie* there is nothing in that statement to indicate that the appellant was asking the court to decide the main issue (No. 1) upon the basis that Lot 2 and not the entire premises was reasonably required for her and her family's occupation as a residence. The answer given by the learned District Judge to issue No. 1 suggests that he construed the statement of learned counsel to mean that the appellant was confining the issue of reasonable requirement to Lot 2 alone. The Court of Appeal also appears to have placed the same construction on learned counsel's statement. In my view this construction is unreasonable and unwarranted. I hold that there has been no change in the scope of the action as constituted.

The basic issue in this case is whether the premises in suit (both Lots 1 and 2) is reasonably required for the occupation of the appellant and her children. As all the material necessary for a determination of this issue are before us I will proceed to consider the submission of learned counsel for the appellant that the appellant has established that her need of the premises (Lots 1 and 2) is much greater and more urgent than that of the respondent. On this point the learned District Judge seems to have had no hesitation in accepting the evidence of the appellant and has come to a strong finding in her favour. The Court of Appeal too has expressed the opinion that the premises are reasonably required for the occupation of the appellant and her family. There are thus concurrent findings of fact in favour of the appellant. There is, in my view, ample evidence to support these findings of fact. The appellant is a divorcee with two dependent children. She is employed as a journalist and draws a salary of Rs. 1,100 per month. She also gets from her husband a sum of Rs. 250 as maintenance for the two children, one of whom on enrolment as an Attorney-at-Law will cease to get any maintenance. She is not

possessed of any other income. She pays a sum of Rs. 500 a month as rent for the flat she occupies with her children. She receives from the respondent a sum of Rs. 102.60 cts. as rent for the premises in suit. With the costs of living going up she manages with great difficulty. Sometimes she has to borrow money from her employer. She states that her position is desperate. This sums up her financial plight. The respondent is a government pensioner drawing about Rs. 600 a month as pension. He has 4 grown-up children between 20 to 27 years of age. One is learning work and the other three are employed. The aggregate monthly income of the respondent and his children is about Rs. 2,422. He pays a rent of Rs. 102.60 cts. to the appellant. Financially the respondent and the members of his family do not appear to be in want. The other relevant factor pertaining to this issue is the one relating to alternate accommodation for the respondent. The Rent (Amendment) Law, No. 10 of 1977, was enacted to assist landlords who are owners of one residential premises to recover possession of same. According to the scheme of this amending legislation once a decree is entered by the District Court for the ejection of the tenant on the ground of reasonable requirement in terms of s. 22(1)(bb), the decree remains unexecutable until after the Commissioner of National Housing notifies to court of his ability to provide the tenant with alternate accommodation. The tenant is thus assured of alternate accommodation before the execution of the decree. Moreover in the instant case the respondent vis-a-vis the appellant could continue in occupation of the annexe as the order for ejection is confined to Lot 2 only. It has also to be noted that the law precludes the tenant from canvassing the adequacy or suitability of the alternate accommodation provided by the Commissioner. There is thus sufficient evidence to support the concurrent findings by the District Court and the Court of Appeal on the first issue relating to reasonable requirement. For the above reasons issue No. 1 is answered in the affirmative. Issue No. 2 is also answered in the affirmative in so far as Lot 2 in plan P3 is concerned so that the appellant will be entitled to an order of ejection of the respondent and those holding under him from Lot 2. She will, however, not be entitled to an order of ejection in respect of Lot 1. The appellant will also be entitled to damages at the rate of Rs. 102.60 cts. per month from 1.1.1980 until she is placed in possession of Lot 2. It is also directed that no person other than the appellant or her two children, (whose names will be specified by the District Judge in the decree) shall enter into occupation of Lot 2 upon the vacation thereof by the

respondent or upon his ejection therefrom—vide s. 22 (3) of the Rent Act as amended by the Rent (Amendment) Act, No. 55 of 1980. Writ of ejection from Lot 2 will not issue till 5.6.1986. It will issue on or at any time after 6.6.1986. The learned District Judge is directed to enter decree in the above terms. The appeal is therefore allowed and the judgments of the Court of Appeal and the District Court are set aside. The respondent will pay the appellant a sum of Rs. 525 as costs of this appeal. The case is now remitted to the District Court for decree to be entered in terms of this judgment.

SHARVANANDA, C.J. — I agree.

H. A. G. DE SILVA, J. — I agree.

*Appeal allowed.*

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