

**JIFFRY
v.
ESUFALI**

SUPREME COURT
G. P. S. DE SILVA, C.J.,
WIJETUNGA, J. AND
GUNASEKERA, J.
SC APPEAL NO. 140/97
CA APPEAL NO. 95/94(F)
DC MT. LAVINIA NO. 2516/RE
JANUARY 13TH, FEBRUARY 2ND AND 16TH AND
MARCH 3, 1998.

Rent and ejectment – Recovery of residential premises – Rent Act – Section 22 (2) (bb) (ii) – Prohibition against recovery in section 22 (7) – Right of the Landlord who acquires ownership of the premises after the commencement of the tenancy with defendant.

The plaintiff who was the lessee of the premises in suit let it to the defendant on 1.8.65. During the subsistence of the tenancy the ownership of the premises was transferred by the owner to the plaintiff on 2.2.79. Thereafter the plaintiff instituted action on 16.8.86 for ejectment of the defendant in terms of section 22 (2) (bb) (ii) of the Rent Act. The defendant pleaded that the plaintiff acquired ownership of the premises subsequent to the "specified date" and by reason of the provisions of Section 22 (7) of the Act, the plaintiff could not have and maintain the action.

Held:

1. Section 22 (2) (bb) (ii) of the Rent Act is intended to benefit a category of persons who may for convenience be described as "single house owners". This, however, does not mean that ownership of one house or a part of house is a condition precedent to the institution of an action in ejectment.
2. Section 22 (7) is intended to protect a tenant from eviction by a person who had purchased the premises over the head of the tenant and thus becoming the new landlord. It was not by acquisition of ownership that the plaintiff became the landlord of the defendant. The plaintiff merely consolidated his rights by the subsequent purchase of the premises. The right to sue the defendant in ejectment had accrued to the plaintiff before he became the owner of the premises.

Cases referred to:

1. *M. I. Aboobakar v. Jeenath Sulaiha Sulaiman* SC Appeal No. 30/91 SC.Minutes of 18th December, 1991.
2. *Aiyathurai v. Shanmugavadivu* SC.Appeal No. 81/86 SC Minutes of 11th October, 1991.

APPEAL from the judgment of the Court of Appeal.

N. R. M. Daluwatta, PC with *Hemasiri Withanachchi* for the defendant-appellant.

A. A. M. Marleen with *A. M. Zameer* for the plaintiff-respondent.

Cur. adv. vult.

17th March, 1998.

G. P. S. DE SILVA, C.J.

The plaintiff instituted these proceedings on 16.6.86 seeking, *inter alia*, the ejection of the defendant who was his tenant from the premises in suit. The ground of ejection relied on by the plaintiff is section 22 (2) (bb) (ii) of the Rent Act. The plaintiff averred in his plaint:

- (1) that he is the owner of not more than one residential premises;
- (2) that the standard rent of the premises exceeded Rs.100;
- (3) that he has deposited a sum equivalent to five years' rent with the Commissioner of National Housing for payment to the defendant. The defendant in his amended answer pleaded that the plaintiff acquired ownership of the premises subsequent to the "specified date" and by reason of the provisions of section 22 (7) of the Rent Act the plaintiff could not have and maintain this action. The defendant relies on the statutory bar in section 22 (7) of the Rent Act. Vide Issue No. 8 which (as translated) reads thus: "Do the provisions of section 22 (7) of the Rent Act constitute a bar to the plaintiff instituting and/or maintaining this action?"

At the conclusion of the trial, the District Court answered Issue No. 8 in the affirmative and dismissed the plaintiff's action. The plaintiff's Appeal to the Court of Appeal was successful; the judgment of the District Court was set aside and the plaintiff was declared entitled to a decree in ejection. The defendant has now preferred an appeal to this Court.

The plaintiff was the tenant of the premises in suit from 1950 under one Mrs. Daveson. The premises were sold in execution of a money decree against Mrs. Daveson and her husband. Norman Esufali, the brother of the plaintiff, purchased the premises on fiscal's conveyance

dated 8.10.1956 (P8). Subsequent to the purchase of the property by Norman Esufali, the plaintiff had entered into a lease agreement dated 17.8.59 (P9) with the aforesaid Mrs. Daveson. Thereafter the plaintiff shifted his residence to another place and he gave the premises on rent to the defendant for a period of 4 years by a lease bond dated 15.9.65 (P10). The defendant came into occupation of the premises on 1.8.65. The premises were transferred by Norman Esufali to the plaintiff by deed No. 381 of 2.2.79 (P11). On these facts, which were not in dispute, it is clear (a) that the plaintiff came into occupation of these premises as far back as 1950 as a tenant under Mrs. Daveson; (b) that the defendant came into occupation of the premises on 1.8.65 as a tenant under the plaintiff; (c) that the plaintiff acquired ownership of the premises on 2.2.79 after the defendant came into occupation of the premises on 1.8.65.

Mr. Daluwatte for the defendant-appellant strenuously contended before us both in his oral and written submissions that the plaintiff's action must fail for two reasons. In the first place, a landlord seeking to avail himself of the provisions of section 22 (2) (bb) of the Rent Act must establish that he is the owner of one residential premises, or at least a part of such premises, before the "specified date" as defined in section 22 (7) of the Rent Act. On the admitted facts, counsel contended that the plaintiff was not the owner of any residential premises or even a part of such premises before the "specified date". The second reason urged by counsel is that the plaintiff acquired ownership of the premises after the "specified date" and accordingly the statutory bar enacted by section 22 (7) applies.

The material part of section 22 (2) (bb) (ii) and of section 22 (7) reads thus:

"22 (2) Notwithstanding anything in any other law, no action or proceedings for the ejection of the tenant of—

(i) any residential premises the standard rent (determined under section 4) of which for a month exceeds one hundred rupees; or

(ii)

shall be instituted in or entertained by any court, unless where—

- (a)
- (b); or

(bb) 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—

- (i); or
- (ii) the landlord of such premises has deposited prior to the institution of such action or proceedings a sum equivalent to five years rent with the Commissioner for National Housing for payment to the tenant;

22 (7) Notwithstanding anything in the preceding provisions of this section, no action or proceedings for the ejection of the tenant of any premises referred to in subsection (1) or subsection (2) (i) shall be instituted—

- (a) or
- (b) where the landlord is the owner of not more than one residential premises on the ground that—
 - (i) or
 - (ii) the landlord of such premises has deposited prior to the institution of such action or proceedings a sum equivalent to five years' rent with the Commissioner for National Housing for payment to the tenant,

Where the ownership of such premises was acquired by the landlord, on a date subsequent to the specified date, by purchase or by inheritance or gift other than inheritance or gift from a parent or spouse who had acquired ownership of such premises on a date prior to the specified date:

.....

In this subsection, "specified date" means the date on which the tenant for the time being of the premises, or the tenant upon whose death the tenant for the time being succeeded to the tenancy under section 36 of this Act or section 18 of the Rent Restriction Act (No. 29 of 1948), came into occupation of the premises".

On the question whether the ownership of one house (or at least a part of a house) is an essential ingredient of the cause of action, Mr. Marleen for the plaintiff-respondent relevantly cited the case of *M. I. Aboobakar v. Jeenath Sulaiha Sulaiman*⁽¹⁾ wherein Dheeraratne, J. expressed himself in the following terms:

"The second point raised on behalf of the appellant was that in order to come under subsection 22 (2) (bb) the plaintiff landlord must be a one house owner and since the plaintiff was the owner only of one half of the premises, the action should have necessarily failed. The relevant portion of subsection 22 (2) (bb) reads: "in the case of premises let to a tenant . . . and where the landlord is the owner of **not more than** one residential premises". On a plain reading of the relevant part of the subsection it is obvious that the maximum number of premises that a landlord seeking to avail himself of filing action in terms of that subsection should own is specified. That is one premises, the landlord may own one or none at all . . ."

I have no doubt that this interpretation is correct. What the law clearly contemplated was that a landlord who owned more than one house could not have availed himself of the provisions of section 22 (2) (bb) (ii). It is intended to benefit a category of persons who may for convenience be described as "single house owners". This, however, does not mean that the ownership of one house (or a part of a house) is a condition precedent to the institution of an action in ejectment. There is no warrant for placing such a construction, having regard to the wording of the section.

I accordingly hold that the plaintiff in the instant case who was not the owner of any residential premises prior to the "specified date" was entitled to sue the defendant for ejectment in terms of section 22 (2) (bb) (ii). Mr. Daluwatte pointed out that in *Aboobakar's* case (*supra*) the plaintiff was the owner of one half share of the premises. This fact makes no difference to the interpretation of the section.

The next submission advanced on behalf of the defendant-appellant was that the plaintiff having acquired ownership of the premises *after* the "specified date", the provisions of section 22 (7) of the Rent Act constituted a bar to the institution of the action. With this submission, I am afraid, I cannot agree. It seems to me that the provisions of section 22 (7) were intended to protect a tenant from eviction by a person who had purchased the premises over the head of the tenant and thus becoming the new landlord. An example would be where A, the owner of a house lets it to B; A *thereafter* sells the house to C who by virtue of the sale becomes the new landlord over the head of the tenant B. Section 22 (7) could apply in such a situation. In the case before us, however, the position is significantly different. The reason is that the plaintiff was at all material times the landlord and the defendant was the tenant under the plaintiff. What needs to be stressed is that it was not by virtue of the acquisition of ownership that the plaintiff became the landlord of the defendant. As far as the defendant was concerned, there was no change of the landlord by reason of the plaintiff acquiring ownership of the premises. The plaintiff merely consolidated his rights by the subsequent purchase of the premises. The right to sue the defendant in ejectment had accrued to the plaintiff before he became the owner of the premises (*vide Aiyathurai v. Shanmugavadivu*⁽²⁾, where the analogous provisions contained in the proviso to section 27 (1) of the Rent Act were considered).

The Court of Appeal rightly held that: "the plaintiff in the instant case has acquired ownership of the said premises while being the landlord of the defendant . . . and . . . the statutory bar in section 22 (7) of the Rent Act would therefore not be applicable to him".

For these reasons, the appeal fails and is dismissed with costs fixed at Rs. 1,000. The judgment of the Court of Appeal is affirmed. However, having regard to the fact that the defendant was in occupation of the premises since 1965 and the acute shortage of housing, I direct writ of ejectment not to issue till 30th September, 1999. The plaintiff is entitled to take out writ *without notice* and to be placed in possession of the premises in suit after 30th September, 1999.

WIJETUNGA, J. – I agree.

GUNASEKERA, J. – I agree.

Appeal dismissed.