

DEVARAJAH AND ANOTHER
v.
ARIYATUNGA

COURT OF APPEAL.
S. N. SILVA, J. P/CA
DR. RANARAJA, J.
C.A. NO. 687/88 WITH CALA 78/88
D.C. COLOMBO NO. 3149/RE
FEBRUARY 23, 1995.

Landlord and Tenant – Rent Act, No. 7 of 1972, Section 36(2) – Ejectment – Death of tenant – Statutory fiction – Death of landlord – New contract of tenancy.

Plaintiff-respondent instituted action for ejectment of the defendant-petitioner. Defendant pleaded that he became the Tenant on 24.2.1973 upon the death of his father, the tenant of the premises. It was admitted that tenancy commenced on 24.2.1973; this was on the basis that the defendant succeeded to the tenancy of his father who died on 24.2.1973. The tenancy was terminated by notice dated 29.12.1977 with effect from 31.3.1978.

The defendant challenged the Notice to quit on the ground that a tenancy which commenced on the 24th of a month, cannot be validly terminated by a Notice of which the terminal date is the 31st of a month; this was on the basis that a new contract of tenancy came into existence on 24.2.1973 upon the death of the former tenant.

Held:

(1) Although the contract of tenancy is based on common law it is regulated in specific respects by the statutory provisions as contained in Rent Act, No. 7

of 1972. One specific instance of such statutory regulation is contained in Section 36 which provides for the continuance of tenancy upon the death of a tenant of premises governed by the Rent Act. The requirements that should be satisfied for such succession are stated in relation to residential premises in paragraphs (a) (b) (c) of subsection (2). This subsection ends with the provision that the person satisfying such requirements shall subject to any order of the Board as hereinafter provided be deemed for the purposes of this Act to be tenant of the premises". Thus continuance of the tenancy is based upon a statutory fiction and not on a fresh contract of tenancy.

(2) There is no provision parallel to section 36(2) which deems that the successor to the interests of the deceased landlord is the landlord of the tenant in occupation. Hence the common law will apply and the tenant (whose occupation of the premises is protected by the Rent Act) may attorn to the successor as landlord. Thus in the case of the death of the landlord a fresh contract of tenancy comes into existence.

Cases referred to:

1. *Weerasuriya v. Manamperi* 1992 – 1 S.L.R. 31.
2. *Miriam Lawrence v. Arnolda* 1984 –Vol. 1 Part IV 136 Bar Association Law Journal.
3. *Sriyani Peiris v. Mohamed* 1986 – 2 S.L.R. 385.

APPLICATION in Revision of the order of the Addl. District Judge of Colombo.

I. Mohamed with Hussain Ahamed for defendant-petitioners.
N. R. M. Daluwatta, P.C. for plaintiff-respondent.

Cur. adv. vult.

March 10, 1995.

SILVA, J. P/CA

This is an application in revision from the order dated 21.6.88. By that order Learned Addl. District Judge answered issue No.12, which was taken up as a preliminary issue of law, in favour of the plaintiff.

The above action was filed by the plaintiff-respondent for ejection of the defendants from premises bearing No. 2, Ketawalamulla Lane, Colombo 9, more fully described in the schedule to the plaint. Action has been filed on the basis that the premises are governed by the Rent Act. There are two causes of action. The first is on arrears of rent and the second is on

unauthorised-subletting. The defendant-petitioners filed answers denying the causes of action and pleaded for a dismissal of the action. The 1st defendant-petitioner in paragraph 3 of the amended answer dated 2.4.85 stated that he became tenant on 24.2.73 upon the death of his father one S. Selliah who was the tenant of the premises. At the commencement of the trial it was recorded as an admission that the tenancy commenced on 24.2.73. It is clear that this admission is referable to paragraph 3 of the answer of the 1st defendant (referred above) where it was admitted that he succeeded to the tenancy of his father who died on 24.2.1973. According to paragraph 4 of the plaintiff's tenancy had been terminated by notice dated 28.12.77 with effect from 31.3.78. It appears that issue No. 12 was raised by the defendants as to whether the notice to quit is valid in law on the basis that the tenancy which commenced on the 24th of a month cannot be validly terminated by a notice of which the terminal date is the 31st of a month. This issue was taken as a preliminary issue of law.

Learned counsel for the defendant-petitioners submitted that a new contract of tenancy came into existence on 24.2.73 upon the death of the former tenant, as admitted by the respondent. On this basis it was contended that the tenancy would continue on a monthly basis and can validly be terminated, at the end of a month namely, the 24th. Counsel for the plaintiff-respondent submitted that a fresh contract of tenancy did not come into existence upon the death of the former tenant. He submitted that the continuance of the tenancy, upon the death of the former tenant, is not based on common law but on a statutory provision as contained in section 36(2) of the Rent Act No. 7 of 1972. He submitted that in view of this provision the succeeding tenant continues as the tenant on the basis of the contract of tenancy which existed with the former tenant who had died. Hence a new contract of tenancy cannot be considered as having commenced on 24.2.73 being the date of the death of the former tenant.

We have considered the submissions of Learned Counsel in relation to the order of the Learned Addl. District Judge made on the preliminary issue of law. We have to note that although the contract of tenancy is based on common law it is regulated in specific respects

by the statutory provisions as contained in Rent Act No.7 of 1972. One specific instance of such statutory regulation is contained in section 36 which provides for the continuance of tenancy upon the death of a tenant of premises governed by the Rent Act. The requirements that should be satisfied for such succession are stated in relation to residential premises and business premises in paragraphs (a), (b) and (c) of subsection (2). This subsection ends with the provision that the person satisfying such requirements "shall, subject to any order of the board as hereinafter provided, be deemed for the purposes of this Act to be the tenant of the premises". Thus the continuance of the tenancy is based upon a statutory fiction and not a fresh contract of tenancy. In the case of *Weerasooriya v. Manamperi* ⁽¹⁾ a bench of two Judges of this Court held, following the observations made by the Supreme Court in the case of *Miriam Lawrence v. Arnold* ⁽²⁾, that the person succeeding to the tenancy of the deceased tenant in terms of section 36 is a "statutory tenant" and that there is "no fresh contract of tenancy between the parties."

Learned Counsel for the Petitioners submitted that we should depart from the decision in *Manamperi's* case and follow the decision in *Sriyani Peiris v. Mohamed* ⁽³⁾ where it was held that upon the death of the Landlord, if the tenant continues in occupation under the new Landlord, a fresh contract of tenancy comes into existence. We have to note that the situation arising from the death of the landlord is not regulated by a specific statutory provision as in the case of the death of the tenant. There is no provision parallel to section 36(2) which deems that the successor to the interests of the deceased landlord is the Landlord of the tenant in occupation. Hence the common law will apply and the tenant (whose occupation of the premises is protected by the Rent Act) may attorn to the successor, as landlord. Thus in the case of the death of the landlord a fresh contract of tenancy comes into existence. It is not so in the case of the death of the tenant, where the common law is superseded by the specific statutory provision in section 36(2) of the Rent Act where it is provided that the person entitled to succeed to the deceased tenant in terms of paragraph (a) (b) or (c) is deemed for the purposes of the Act to be the tenant. The contract of tenancy continues with the successor as the statutory tenant. Therefore we cannot accept the submission of

Learned Counsel for the defendant-petitioners. The application is dismissed. Each defendant-petitioner will pay a sum of Rs. 1,000/- as costs to the plaintiff-respondent.

DR. RANARAJA, J. – I agree.

Application dismissed.
