

MANNANAYAKE
v.
PIYASEELI

COURT OF APPEAL
TILAKAWARDANE, J., AND
UDALAGAMA, J.
CA NO. 1044/91 (F)
DC COLOMBO NO. 6399/RE
APRIL 04, 2001

Rent Act, No. 7 of 1972 – S. 22 (1) bb, s. 22 (1), (2), (3) – S. 22 (7) – Amendment No. 10 of 1977 – Specified date – Applicability of the Bar in s. 22 (7).

The premises were purchased by A in 1966. The defendant-respondent had been living in the premises from 1941 and was admittedly in occupation at the time the premises were sold to A. Upon A's death in 1968 his heirs inherited the property. His spouse, instituted action in terms of s. 22 (1) (bb) seeking the ejection of the defendant-respondent.

The District Court held that the bar in s. 22 (7) applies and dismissed the action.

On appeal it was contended that s. 22 (7) was inapplicable, as the Rent Act had no retrospective effect, as the purchase of the premises had been in 1966.

Per Tilakawardane, J.

"S. 22 (7) needs no interpretation as it is not lacking in clarity. The retrospectivity is clear from the words of s. 22 (7) especially when it is read together with the preamble of the Act and the intention of the legislature that the Rent Act was enacted specifically for the protection of tenants."

- (i) Specified date contemplated in s. 22 (7) is capable of being even before the operation of the Rent Act, No. 7 of 1972 and includes a period when tenancy was governed by the Rent Restriction Act.
- (ii) The bar does not operate, 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 on a date prior to the specified date.

- (iii) It is manifest that when the ownership of the premises went to the landlord by inheritance after 1968, the tenant was already in occupation from 1941 – at the time, the plaintiff did not obtain the ownership of the premises on a *date prior* to the date on which the tenant came into occupation.

APPEAL from the judgment of the District Court of Colombo.

Case referred to :

1. *Kanagasabai v. Seevaratnam* – 76 NLR 517.

Aravinda Athurupana for plaintiff-appellant.

T. B. Dillimuni for substituted defendant-respondent.

Cur. adv. vult.

May 31, 2001

SHIRANEE TILAKAWARDANE, J.

This appeal has been preferred by the plaintiff-appellant against the judgment of the District Judge, Colombo, dated 27. 08. 1991 wherein the action of the plaintiff had been dismissed without costs.

The plaintiff instituted action in terms of section 22 (1) (bb) of the Rent Act, No. 7 of 1972 as amended by Rent (Amendment) Law No.10 of 1977 seeking the ejection of the defendant and all those holding under the defendant from premises bearing assessment No. 111/25, Ananda Mawatha, Colombo 5. The plaintiff also claimed damages in a sum of Rs. 218/14 and further damages at Rs. 16/78 per mensem from 01. 09. 1985 until the plaintiff was restored to vacant possession and for costs.

During the pendency of the action the original defendant died on 24. 05. 1988. His wife was substituted, thereafter, as substituted defendant.

The main matter for determination in this case was whether the trial Court had erred in holding that the action was barred by

section 22 (7) of the Rent Act or whether the section did not have retrospective effect and was, therefore, not applicable to this action.

Counsel appearing for the plaintiff-appellant submitted that section 22 (7) was inapplicable, as the Rent Act had no retrospective effect inasmuch as admittedly the purchase of the premises in suit by the defendant had been in 1966. 20

The plaintiff had instituted this action on 26. 09. 1985. The Rent Act came into operation on 01. 03. 1972. Counsel for the plaintiff-appellant has argued that this section was not retrospective and would therefore not be operative. His argument was that in interpreting this section of the Rent Act, it must be considered as being prospective. He urged that it had been held that sections 22 (1), (2) and (3) of the Rent Act are prospective and are not retrospective in their scope and nature (*Kanagasabai v. Seevaratnam*⁽¹⁾). The only question specifically dealt with in that judgment was whether section 22 (3) of the Rent Act applied to cases which were pending at the time when the said Act came into force, and therefore, is irrelevant to the determination of this case. 30

Section 22 (7) of the Rent Act needs no interpretation, as it is not lacking in clarity. (Interpretation of Statutes. Maxwell 12th ed. page 215). The retrospectivity of the section is clear from the words of section 22 (7) of the Rent Act. Especially, when it is read together with the preamble of the Act and the intention of the Legislature that the Rent Act was enacted specifically for the protection of tenants. 40 It is significant that this section has defined what is meant by "specified date". It reads as follows:

"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 the premises".

Therefore, the 'specified date' contemplated in the section is capable of being even before the operation of the Rent Act, No. 7 of 1972⁵⁰ and includes a period when tenancy was governed by the Rent Restriction Act. By implication it was therefore intended to have retrospective operation. This is analogous to the interpretation of the Ceiling on Housing and Property Act, which cannot only be said to be operative to those who came into possession of an excess house after the operative date of that Act. No suggestion can be made that when the owner of the house purchased it he had no knowledge that a Ceiling was going to be introduced and therefore the Act could have only prospective operation. He could not seek an exemption of that law merely because the operative date of the law was 13. 01. 1974.⁶⁰

Section 22 (7) of the Rent Act contains a bar to actions or proceedings being instituted for the ejection of a tenant of any premises referred to in section 22 (1) or 22 (2) of the Rent Act.

But, this bar does not operate if the following conditions are satisfied. 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**. The specified date being the date on which the tenant for the time being of the premises came⁷⁰ into occupation of the premises.

It is manifest that the bar in terms of section 22 (7) of the Rent Act would **operate** only if the Landlord had obtained the premises under the following two conditions:

- (1) Where the landlord obtained the premises by purchase or by inheritance or gift **other than inheritance or gift from a parent or spouse**; and

- (2) Where the ownership was acquired on a **date prior** to the date on which the tenant came into occupation of the premises.

In other words the bar would **not operate** if the landlord obtained ⁸⁰ the ownership of the premises by **an inheritance or gift by a parent or spouse** and where the landlord obtained the premises **after** the tenant came into occupation of the premises.

According to the facts in the present case the premises in dispute were admittedly purchased by the vendor, Rathuge David Appuhamy by virtue of deed No. 1652 dated 17th of January, 1966. The defendant had been living in the premises from 1941 and was admittedly in possession at the time the premises were sold to Rathuge David Appuhamy. Upon the vendor's death on 16. 03. 1968, his heirs inherited the property. His spouse, who was one of his heirs, ⁹⁰ instituted this action.

It is manifest that when the ownership of the premises went to the landlord by inheritance after 1968, the tenant was already in occupation of the premises (from 1941) at the time. The plaintiff did not obtain the ownership of the premises on a **date prior** to the date on which the tenant came into occupation of the said premises. Therefore, the Landlord cannot claim an exemption of the bar contained in section 22 (7) of the Rent Act.

Therefore, the District Judge has correctly held that the bar would operate, and dismissed the action of the plaintiff. ¹⁰⁰

The District Judge, Colombo, has also found that the notice to quit P4, and the documents (P4a and P4b) which had been produced to prove that said notice to quit had been sent by registered post, had not been proved. No evidence had been elicited to prove the authenticity of these documents in terms of the Evidence Ordinance. The plaintiff-appellant, however, did not canvass these matters before this Court.

In any event in terms of section 22 (1) of the aforesaid Rent Act before a decree of ejectment in terms of section 22 (1) (bb) cannot be issued on the ground that the premises are reasonably required¹¹⁰ by the landlord until the Commissioner for National Housing had notified to such Court that he is able to provide alternate accommodation for such tenant. The Court has not been in receipt of such notification. No writ in execution of such decree could in any event be issued until this prerequisite is complied with.

The District Judge, Colombo, in a well considered judgment has come to his findings and dismissed the plaintiff's action. I see no reason to interfere with the same. The appeal is dismissed. I make order for payment of taxed costs by the plaintiff-appellant to the substituted defendant-respondent.

120

UDALAGAMA, J. – I agree.

Appeal dismissed.