

KODITUWAKKU ARATCHI
v.
NELIYA WADUGODAPITIYA

COURT OF APPEAL
WIJEYARATNE, J., AND
WEERASEKERA, J.
C.A. APPEAL NO. 1000/82(F)
D.C. KANDY NO. 12769/L
5TH OCTOBER, 1992.

Landlord and Tenant – Dependant – Section 36(2)(a) (i) Rent Act.

Where an elderly lady about 80 years old was living in a rented flat and the defendant (a young woman in her early 20's) was brought to live in and look after her and attend to her needs for which she received periodical payments and was also provided with clothes and sent to batik classes:

Held: that on the death of the lady the defendant was not entitled to succeed to the tenancy as she was not a dependant within the meaning of section 36(2) (a)(i) of the Rent Act.

The defendant was a domestic servant or an aide whose connection with the lady was based on contract, express or implied.

A dependant must be a dependant in the proper sense of the word and not one who merely derives some benefits from another.

In the absence of any definition of "dependant" in the Rent Act, the authorities establish following propositions:--

- (a) Dependency is not based upon any legal obligation to maintain.
- (b) A dependant is a person who derives support wholly or mainly for his or her subsistence upon another.
- (c) It is a question of fact upon the facts and circumstances of each case whether a person is a dependant of another.

Cases referred to:

1. *Re Ball* (1947) Ch. 228.
2. *Re Baden's Trust – 2* (1973) Ch. 9.
3. *McClellan and Wife v. Moss Bay Iron and Steel Co. Ltd.* (1909) 2 KB 521.
4. *Smelting Co. of Australia v. The Commissioner of Inland Revenue* (1897) 1 Q.B. 275.
5. *Turton v. Turnbull* (1934) 2 K.B. 197.
6. *Stile Hall Properties Ltd. v. Gooch* (1979) 3 All E.R. 848, 851.

APPEAL from judgment of the District Court of Kandy.

A. K. Premadasa, P.C. with *C. de Silva* for Plaintiff-Appellant.

L. C. Seneviratne, P.C. with *L. Perera* for Defendant-Respondent.

Cur. adv. vult.

27th November, 1992

WIJEYARATNE, J.

The plaintiff filed this action on 4.9.80 for a declaration of title and ejectment of the defendant from premises No. 23-2/11 Dalada Veediya, Kandy. Also the plaintiff had claimed a sum of Rs. 1,500/- as damages and Rs. 100/- per month as continuing damages till possession was restored.

The defendant in her amended answer had taken up the position that these premises were governed by the Rent Act, No. 7 of 1972, that the authorised rent was Rs. 50/92, that Miss F. M. Struyz was the tenant of these premises and while she was a tenant of these premises she died on 2.11.78, that the defendant was a member of Miss Struyz's household for three months prior to her death, and that

she was a dependant of Miss Struzyz prior to her death and accordingly claimed to have succeeded to the tenancy under the provisions of the Rent Act.

The title of the plaintiff to these premises was admitted and therefore the main issue of the case was whether the defendant was:

- (a) a dependant of Miss Struzyz immediately prior to her death, and
- (b) a member of her household during the whole of the period of three months preceding her death,

in terms of section 36(2) (a) of the Rent Act.

The learned Additional District Judge by his judgment dated 31.8.83 held that the defendant succeeded to the tenancy of Miss Struzyz under section 36(2) (a) and dismissed the plaintiff's action with costs; from which judgment and decree this appeal has been filed.

The evidence in this case reveals that the defendant was a young person in her early twenties living in Gelioya, which is situated a few miles away from Kandy and both her parents were deceased.

Miss Struzyz was an elderly Burgher lady around 80 years living in these premises. She had another elderly woman to look after her. Mrs. J. M. Fernando who was a relative of Miss Struzyz was living in Colombo and used to visit her. The defendant also used to come to this same building where these premises and certain other flats were located to see a relation of hers. The defendant had come to know Mrs. Fernando, who had requested the defendant to stay in these premises and look after Miss Struzyz. Accordingly in about 1975 or 1976 she had begun living in these premises and was looking after the needs of Miss Struzyz. She admitted that previously she did not have any job but was looking out for a job. She stated that she looked after Miss Struzyz even while she was warded at a Nursing Home and attended to her needs and for this she received periodical payments.

The defendant admitted that her ration book continued to remain registered at her house in Geliyoa where she had lived earlier; likewise she was registered as a voter at her home in Geliyoa all these years.

Miss Struyz died on 2.11.78 and thereafter Mrs. S. M. Fernando had made an application dated 19.12.78 (P9) to the Rent Control Board of Kandy to be recognised as tenant of these premises. However Mrs. Fernando withdrew her application on 30.10.79 (*vide* P2). The defendant had made a similar application to the Rent Control Board of Kandy dated 8.5.79 (P13) and this is pending and awaiting the outcome of this case.

The question arises whether the defendant was a "dependant" within the meaning of section 36(2) (a) of the Rent Act. The word "dependant" has not been defined in the Rent Act. Both learned counsel cited various definitions of "dependant" from legal dictionaries in England, but these are not quite relevant as they relate to various other contexts in which this term is used (as for instance, under the Workmen's Compensation Act of England and various other Statutes in England).

In *Re Ball*⁽¹⁾ it was held that a gift in a Will to a dependant was not sufficiently certain to take effect. However in *Re Baden's Trust*⁽²⁾ it was held that "dependants" are persons wholly or in part dependent upon the means of another and its inclusion in the clause of a settlement did not render the clause void for uncertainty.

It should be kept in mind that a dependant must be a dependant in the proper sense of the word and not merely a person who derives some benefit from any person.

The ordinary dictionary meaning of the word "dependant" is one who depends on another for support or maintenance, or a person for whose maintenance one is responsible.

In *McClellan and Wife v. Moss Bay Iron and Steel Co. Ltd.*⁽³⁾ it was held that dependency is irrespective of legal obligation to maintain and is a question of fact in each case.

In the absence of any definition of "dependant" in the Rent Act, the authorities establish the following propositions:-

- (a) Dependency is not based upon legal obligation to maintain.
- (b) A dependant is a person who derives support wholly or mainly for his or her subsistence upon another.
- (c) It is a question of fact upon the facts and circumstances of each case whether a person is a dependant of another.

All this evidence points to the fact that the defendant was employed as a servant or an aide of Miss Struyz. Domestic servants or aides are not "dependants". Their connection with the employer is based on a contract, express or implied. The fact that Miss Struyz provided her with clothes and sent her to batik classes merely shows that she was a kind and generous employer. This does not make the defendant a dependant of Miss Struyz.

It was never the intention of the Rent Act to enable domestic servants or aides to succeed to the tenancy on the death of their employer.

The fact that at first Mrs. J. M. Fernando and later the defendant had made applications to the Rent Control Board to succeed to this tenancy shows that there was a doubt in the matter.

As submitted by learned counsel for the plaintiff-appellant Mr. A. K. Premadasa, the provisions of section 36(2)(a) refer to a person in a family, namely the surviving spouse, a child, a parent, a brother or sister of the deceased tenant. Therefore he argued that the word "dependant" which follows should be interpreted in reference, to one who is connected to the family.

There is force in this contention and the rule of *ejusdem generis* in the construction of statutes is applicable in the matter. The *ejusdem generis* doctrine has been described in the words of Lopes, LJ in *Smelting Co. of Australia v. The Commissioner of Inland Revenue*⁽⁴⁾ as meaning "that where general words immediately follow or are closely

associated with specific words, their meaning must be limited by reference to the preceding words.

In Bindra's "Interpretation of Statutes" (7th Edn. 1984) it is stated as follows at page 339:—

"The rule of *ejusdem generis* is that where general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct *genus* or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary."

Therefore the wording of this section suggests that the dependant should also be one connected to the family and certainly not a servant.

The Rent Act interferes with the common law rights of the landlord and hence should be strictly interpreted.

In Bennion's "Statutory Interpretation" ('984 Edn.) it is stated as follows at pages 620 and 621:—

"In *Turton v. Turnbull* ⁽⁵⁾ Scrutton, LJ said of a point on s.12 of the Agricultural Holdings Act 1923—

'As by the Act (the landlord) is being deprived of his common law rights. I think we must construe the Act with some liberality in his favour and scrutinise the tenant's claim with some strictness.'

The social changes which have occurred since this case was decided in 1934 would now weigh the scales more heavily in favour of the tenant.

Where property rights given at common law are curtailed by statute, the statutory conditions must be strictly complied with. Thus Davies, LJ said of the Landlord and Tenant Act 1954: 'The statute, as we all know, is an invasion of the landlord's right, for

perfectly proper and sound reasons; but it must be construed strictly in accordance with its terms' (*Stile Hall Properties Ltd. v. Gooch*⁽⁶⁾).

For these reasons I hold that the defendant was not a dependant of Miss Struyz within the meaning of section 36(2) (a) (i) of the Act and is not entitled to succeed to the tenancy. Hence the other question under section 36(2) (a) (ii) also which the defendant has to prove, namely that she was a member of the household of the deceased tenant during the whole of the period of three months preceding her death does not arise for consideration.

The defendant has no lawful right to remain in these premises.

On 24.5.82 when the trial commenced it was admitted that the plaintiff was the owner of these premises. It was agreed that in the event of the plaintiff succeeding in this action, damages would be at Rs. 50/92 per month.

I set aside the judgment and decree of the learned Additional District Judge and enter judgment for the plaintiff as prayed for with costs, but damages will be restricted to Rs. 50/92 per month from the date of action till possession is restored.

The plaintiff-appellant will be entitled to the costs of appeal.

WEERASEKERA, J. – I agree.

Appeal allowed.