Weerasinghe v. Chandradasa

COURT OF APPEAL.
RODRIGO, J. AND L. H. DE ALWIS, J.
C. A. (S.C.) 1997/79—M.C. MALIGAKANDA 74/c.
DECEMBER 14, 1979.

Rent Act, No. 7 of 1972, section 27 (1)—Meaning of words "living in and living only in" sub-section (1) (b)—Premises must be only residence of plaintiff for requisite period.

Landlord and tenant—Notice to quit—Use of the words "on or before"—Notice under section 27 (1) (d) of Rent Act—Requisites of a valid notice.

The plaintiff was the owner of residential premises which he occupied with his family. In May, 1974, he let a part of these premises to the defendant on a monthly tenancy. By a letter dated 28.12.77 the plaintiff sought to terminate the tenancy by giving the defendant notice to quit "*on or before*" the 31st January, 1978, and thereafter the plaintiff brought this action for ejectment under section 27 of the Rent Act.

It was contended for the defendant that the plaintiff had not complied with the requirements of the said section 27 because :—(*a*) the plaintiff was not "living in and living only in" another part of the said premises for a period of not less than six months immediately prior to the date on which the action was instituted, as required by section 27 (1) (b) and (b) the defendant had not been given one month's notice of termination of the tenancy, as required by section 27 (1) (*d*), since in the notice to quit he was asked to vacate "on or before" the end of the current month of his tenancy.

Held

(1) The words "living in and living only in" in section 27 (1) (b) of the Rent Act were used to emphasise that the plaintiff must occupy his part of the premises as his only residence, for the requisite period of six months; and the evidence in this case established such a residence even though the plaintiff was during the said period engaged in a job which required him to leave home and travel from area to area during the week.

(2) The words "on or before" in a notice to quit do not render the notice defective, as they were meant to convey that the tenancy expired at midnight of the last day of the current month, namely the 31st of January, 1978. It was not the position of the tenant at the trial that he was misled by such notice.

Per RODRIGO, J :

"Whether it is expressed to expire on the 31st January or on the 1st February, whichever the date, the notice can be construed as relating to the midnight which divides them."

Cases referred to

(1) *Gunasekera v. Wijesinghe, (1963) 65 N.L.R. 303.*
(2) *Weeraperumal v. Dawood Mohamed, (1898) 3 N.L.R. 340.*
(3) *Imperial Tea Co. Ltd. v. Avamady, (1923) 25 N.L.R. 327.*
(4) *Crate v. Miller, (1947) 2 All E.R. 45.*
(5) *Haniffa v. Sellamuttu, (1967) 70 N.L.R. 200.*
(6) *Sellathurai v. Fernando, (1965) 68 N.L.R. 454 ; 69 C.L.W. 14.*
(7) *Edward v. Dharmasena, (1964) 66 N.L.R. 525 ; 67 C.L.W. 44.*
(8) *Abeywickrema v. Karunaratne, (1962) 63 C.L.W. 23.*

APPLICATION to revise a judgment of the Magistrate's Court, Maligakanda.

J. W. Subasinghe, with *Romesh de Silva*, for the defendant-petitioner.

N. S. A. Goonetilleke, with *N. Mahendra*, for the plaintiff-respondent.

Cur. adv. vult.

January 21, 1980.
RODRIGO, J.

This appeal raises two questions of interpretation—what is the meaning and construction of the word 'living' found in section 27 of the Rent Act of 1972 and similarly of the words 'on or before' used in the notice to quit by the plaintiff to the defendant.

To give the facts shortly. The plaintiff is a Government Engineer who had been sent in 1975 to supervise the work in what has been styled the Lower-Uva Development Scheme. He had been designed the Resident Manager and, it is alleged, the plaintiff had to cover an area of 3,000 square miles in the course of his supervision. The plaintiff and his wife had become the owner of a residential premises in Colombo in 1971. They and their four children had been occupying this house till March 1974, when the wife had left the house leaving the children behind with the plaintiff. Thereafter his children, being of school-going age, continued to be in the premises and the plaintiff too was continuously staying with his children till 1975. From this year he had to be away from the house off and on at his worksite in the development scheme referred to. In May 1974, the plaintiff after his wife had left him, had let a part of these premises to the defendant on a monthly tenancy. This tenancy had been terminated or purported to have been terminated by a letter dated 28.12.77 sent by the plaintiff to the defendant. The defendant not having vacated the premises, the plaintiff instituted this action for ejectment of the defendant and this appeal arises from the order of ejectment entered.

It is contended for the defendant that he is not liable to be ejected since the plaintiff has not satisfied all the provisions of section 27 of the Rent Act, under which section the plaintiff admittedly has instituted this action.

Section 27 of the Rent Act requires, *inter alia*, the landlord to have been living in, and living only in, another part of the premises from which the tenant is sought to be ejected during a period of not less than six months immediately prior to the date of action. The rest of the requirements in this section, not being material, are not in dispute. The defendant disputes that this provision of the section has been satisfied by the plaintiff. His other contention that the notice to quit is not an effecive notice, I shall advert to later.

There does not appear to be any other section in the Rent Act which uses the word 'living' or even if there be, on which anything turns. The word itself has not been defined. In the

definition of residential premises the word used is 'occupy'. Indeed even in the section in which the word in dispute is found, the word used in relation to the tenant is 'occupation'.

Did the legislature then use the word 'living' as a term of art to which a specific meaning is attached or was the word used by the legislature as an ordinary English word in everyday use ? Counsel for the defendant stressed before us that the operative word used is 'living' in this section and inasmuch as this word has not been used in any other section, the legislature had intended a specific meaning in the use of this word, without, however, telling us what the distinction exactly was in respect of legislative intent.

I have looked at the Sinhalese version of the Rent Act and I find that in respect of both landlord and tenant the character of the physical presence is described by the same word and no distinction has been drawn. Be that how it may, the Rent Laws both here and in England have not been free of difficulties of interpretation. Words have used without " any scientific accuracy of language and present difficulties of interpretation to the courts that have to give practical effect to them." The question is " what does the word mean and how does it apply to the particular circumstances of this case ? " That is a question of law, being one of interpretation, but nevertheless it is a jury question in the sense that the word is not a word of art ; it must be interpreted according to its ordinary meaning as a word in the English language in the context in which it has to be construed ; that is to say, the court of construction must interpret it " as a man who speaks English and understands English accurately but not pedantically would interpret it in that context, applying it to the particular subject matter in question in the circumstances of the particular case."

The Shorter Oxford Dictionary defines the word 'living' as having a permanent abode and, it seems to me, that the two words 'living only' here were used together to emphasise that the landlord was required to have his permanent abode in another part of the premises. That is, he must have occupied his part of the premises as his only residence. Any other meaning or construction would involve interesting metaphysical analysis and arguments which might end up in a fruitless semantic exercise or an essay in literature. A man's residence is where he dwells and that carries a connotation of domesticity including " all the major activities of life, particularly, sleeping, cooking and feeding and where his wife, family and servants live and where he too lives when he is not at his place of work ". In everyday language a man has his residence where he has his home.

There is abundant documentary evidence such as the householder's list of the plaintiff, his electricity bills and radio licences and the like which are generally the indices of a man's residence apart from where his children are staying (his wife having separated). The defendant himself had admitted that the defendant did come to his part of the premises in which his children are staying during the weekends. He has also said that he is himself away from his part of the premises most of the week as he is a planter at some outstation and therefore he has had no opportunity of meeting the plaintiff if he had come to his part of the premises even during the week. The plaintiff stated categorically that he had no quarters provided to him by the Government in the development scheme and that in the course of his travels from one area to another in this scheme he occupied circuit bungalows as and when the occasion demanded. He said that the designation "Resident Manager" was a misnomer and he had no residence in any place in that development scheme. He further said that since his wife was not with the children he was in the habit of regularly coming to where his children were living for two or three days of the week in addition to the weekends. The trial Judge had accepted this evidence and had reached the conclusion that, in the circumstances, his permanent abode was in his part of the premises in suit and that he had qualified accordingly to bring this action. These facts do not bring the plaintiff within the doctrine of the 'two-home-man'. He is not like the sailor who has a home at every port of call. When the plaintiff was occupying circuit bungalows he did so out of a necessity for short periods. He had come back to where his children were when his duties did not keep him away and through his children he had corpus possessionis of his part of the premises when he was not there. These premises were not an amenity for him which he enjoyed at his whim and fancy. His occupation of circuit quarters when he was on his work rounds was entirely subservient to the purposes of his duties and therefore he could not have been considered to have dwelt in those quarters. See *Gunasekera v. Wijesinghe* (1). It seems to me that the learned trial Judge is right in his conclusions and I accordingly hold that the plaintiff was living during the relevant time and living only in his part of the premises.

The next matter urged by the counsel for the defendant was the question of the effectiveness of the notice. He contended that requiring the tenant to vacate the premises on or before the 31st of January 1978 was not co-terminous with the monthly tenancy and therefore ineffective. This was not a point taken

in the trial Court. The defendant's position in the trial Court was that he received the notice to quite on the 2nd of January and therefore he did not have a month's notice. It was not his position that the notice was bad because he was required to vacate 'on or before' the 31st of January. Counsel for the defendant has raised this aspect of the matter for the first time before us in this appeal. I shall, however, examine this contention. Defendant's Counsel had taken us through numerous decisions of this Court.

The essence of a notice to quit is to determine the tenancy. In fact what the Rent Act requires in section 27 is that the landlord should have given the tenant one month's notice of the termination of the tenancy. So that the view taken in some of the earlier cases such as *Weeraperumal v. Dawood Mohamed* (2) that the notice that was required is only 'reasonable notice' and not 'notice of any definite length of time' and also the view taken in such cases as the *Imperial Tea Company Ltd v. Avamady* (3) that a month's notice need not necessarily commence from the date of the commencement of the tenancy are now irrelevant, keeping in mind that still the month's notice must terminate on the date on which the period of tenancy expires. In such notices the tenant is required to quit on or before a specified date; that, in my view, means that the period of occupation expires on the midnight of that date. Notices of termination are of a technical nature, technical because they are not consensual documents, but if they are in proper form, they are effective; and they are in proper form if a month's notice is given terminating the tenancy at the end of a current month of the tenancy. When the tenant is required to quit on or before, as in this case, the 31st of January, all that the notice does is to give notice to him that the tenancy is terminated on that date. Whether it is expressed to expire on the 31st January or on the 1st of February, whichever the date, the notice can be construed as relating to the midnight which divides them. In fact, it was not the position of the tenant in the trial Court that he was misled by this notice. See *Crate v. Miller* (4). Often the notices to quit require the tenant to vacate the premises on the first day of the month immediately following the end of the previous month. That is where the tenant is required to quit on or before the 1st of February, for instance, when the current month's tenancy terminates on the 31st of January. Notices in this form also had given rise to the argument that the notice was bad for lack of certainty and as involving a 'broken period'. The case of *Crate v. Miller* referred to had been followed recently in our Courts by T. S. Fernando, A.C.J. in *Haniffa v.*

Sellamuttu (5). Therein he stated, with which I agree respectfully, that the substantial question in all cases of this kind is the intention of the person giving the notice as expressed therein. Neither could it fairly be said that the receiver of the notice was confused with regard to the meaning of the notice and in fact, as I said, he did not say that he was confused at the trial. A quotation from an English case found in the judgment referred to can bear repetition, namely,

> "The validity of a notice to quit ought not to turn on the splitting of a straw. Moreover, if hypercriticisms are to be indulged in, a notice to quit at the first moment of the anniversary ought to be just as good as a notice to quit on the last moment of the day before. But such subtleties ought to be and are disregarded as out of place."

In the case referred to, the notice is dated August 27, 1964, requiring the tenant to quit the premises on 1st December, 1964. In the present case the notice is dated 28th December, 1977, and requires the tenant to vacate the premises on or before the 31st of January 1978. Counsel for the defendant contends that had the tenant been required to vacate the premises on the 1st of February it would have been in order. In the case of *Sellathurai v. Fernando* (6) the notice to quit was dated the 25th of May, 1961, and required the tenant to quit on the 30th of June, 1961, which is the last date of the month as in this case. Alles, J. with whom G. P. A. Silva, J. agreed held that the notice was a valid one month's notice and they purported to follow the case of *Edward v. Dharmasena* (7) referred to therein in which Sri Skandarajah, J. revised an earlier decision to the contrary by him in *Abeywickrema v. Karunaratne* (8). Though the case was sent back by Alles, J. giving an opportunity to the defendant to canvass the matter of the notice, still they were of the firm view that a notice terminating the tenancy on the last day of the month and requiring the tenant to quit on the last of the month is a valid notice. So that on a view of the English case of *Crate v. Miller* and the local cases referred to, it seems to me that the notice in question in this case is a valid notice.

For these reasons, I affirm the order of the learned Magistrate deciding that the tenant shall be ejected and dismiss this application with costs.

L. H. DE ALWIS, J.—I agree.

Application dismissed.

K. Thevarajah,
Attorney-at-Law.