

**HUSSAIN****v.****JIFFRY****SUPREME COURT**

S. N. SILVA, CJ.

BANDARANAYAKE, J. AND

ISMAIL, J.

SC APPEAL NO. 110/97

CA NO. 307/84

DC COLOMBO NO. 4400/RE

19 JULY, 23 AUGUST AND 15 OCTOBER, 2001

*Landlord and Tenant – Rent Act, No. 7 of 1972 – Whether a tenancy is terminable by a unilateral notice of termination by the tenant.*

The appellant was the landlord and the respondent was the tenant of premises No. 297, Main Street, Colombo 11. On 31. 03. 1980, the respondent informed the appellant in writing that he (the respondent) was relinquishing his tenancy with effect from that date and requested the appellant to give the premises to one R. There was no evidence of a new tenancy, nor did the respondent give vacant possession of the premises to the appellant.

However, the respondent sent a letter dated 05. 07. 1980 to the appellant informing her "I continued and still remain the lawful monthly tenant of the premises" with a cheque for rent for the months of April, May and June, 1980, which established that the respondent had not handed over the premises to the appellant.

The appellant instituted action for the ejection of the respondent from the premises, alleging that by this letter dated 31. 03. 1980 the respondent voluntarily terminated the tenancy and that he was in unlawful occupation from 01. 04. 1980.

**Held:**

- (1) In the circumstances, there was no termination of the tenancy and the rule that a tenant cannot contract out of the protection afforded by the Rent Act applies.

**Cases referred to :**

1. *Gaffor v. Vivien Perera* – (1994) 3 Sri LR 114.
2. *Ranasinghe v. Premadharma* – (1985) Sri LR 63 at 72.
3. *Ibrahim Saibo v. Mansoor (D. B.)* – (1953) 54 NLR 217 at 224.

**APPEAL** from the judgment of the Court of Appeal.

*Rohan Sahabandu with Athula Perera for appellant.*

*E. D. Wickremayake with Anandhi Cooray for respondent.*

*Cur. adv. vult.*

February 25, 2002

**SHIRANI A. BANDARANAYAKE, J.**

The plaintiff-respondent-appellant (hereinafter referred to as the 1 appellant) instituted action in 1980 against the defendant-appellant-respondent (hereinafter referred to as the respondent) for the ejectment of the respondent from the premises in question. The appellant took up the position that the respondent by his letter dated 31. 03. 1980 (P1), terminated the tenancy voluntarily and that he was in unlawful occupation from 01. 04. 1980.

At the conclusion of the trial the District Court held in favour of the appellant. The respondent appealed to the Court of Appeal which was allowed by its decision dated 29. 01. 1997. The appellant, 10 thereafter, appealed to this Court and special leave to appeal was granted on 17. 07. 1997 only on the following question :

"As the contract of tenancy is a contract between two parties when the terms and conditions are accepted by the two parties, can one party unilaterally change and revoke his earlier decision."

Does notice relied upon by the plaintiff (P1) serve to terminate the tenancy?"

The Court of Appeal held against the appellant on the ground that a tenant can never contract out of the protection afforded by the Rent Act.

It is common ground that the respondent was the tenant and the premises in question is governed by the Rent Act, No. 7 of 1972. It is also common ground that the respondent wrote a letter to the appellant on 31. 03. 1980 (P1). This letter was in the following terms :

"Premises No. 297, Main Street, Colombo 11.

I hereby inform you that I am relinquishing my tenancy of the above premises of which you are the landlady as from the 31st March, 1980.

Mr. A Ragunathan, who is a good friend of mine wants to get <sup>30</sup> the tenancy of the premises and shall be grateful if you would give the premises to him."

It is also common ground that after writing the above letter, the respondent did not give vacant possession and the appellant instituted action to evict the respondent.

Citing *Ghaffor v. Vivien Perera*,<sup>(1)</sup> the learned counsel for the appellant stressed that the applicability of common law with regard to the Rent Act has not been abrogated in its entirety. His position is that, if the Rent Act is silent on the issue of the tenant renouncing his tenancy, the common law would be applicable and in such a <sup>40</sup> situation the appellant could act on the letter relinquishing tenancy. The contention of the learned counsel is that the only requirement in this kind of a situation is the acceptance of the relinquishing of the tenancy by the landlord.

Learned counsel for the respondent, however, was not in agreement with this view. His contention is that there is no provision in the Rent Act for application of the common law when there is a lacuna in the Act.

Although there is comprehensive statutory provision on tenancy in Sri Lanka, yet the common law applicable to the subject area has <sup>50</sup>

not been abrogated in its entirety. Referring to the above, Prof. G. L. Peiris, in his book on '*The Law of Property in Sri Lanka, volume II, Landlord and Tenant*' (Lake House Investments, 1976) has stated that –

"The Roman Dutch common law applicable to landlord and tenant has not been abrogated, in its entirety, by the statutes which govern the subject today in Sri Lanka. Although some aspects of the common law have been superseded entirely by provisions incorporated in statutes, there are yet other areas of the common law which remain substantially intact. The statutes, therefore, are to be seen as an edifice erected on the foundation of the common law . . ."<sup>60</sup>

It should, however, be noted that although the common law still remains 'substantially intact', the Rent Act incorporates statutory provisions which are predominantly for the protection of the tenant. In *Ranasinghe v. Premadharma*<sup>(2)</sup> Wanasundera, J. was of the view that –

"The Rent Act has created a statutory relationship between landlord and tenant drastically altering some common law concepts and has been designed to ensure a great measure of security and protection to tenants."<sup>70</sup>

With regard to the present position, there is no necessity to consider the applicability of common law principles, as a similar situation has been considered in a collective judgment of five (5) Judges in *Ibrahim Saibo v. Mansoor*.<sup>(3)</sup> In their collective judgment, the Court stated that –

"A tenant can never contract out of the protection afforded. It follows from this that he can at any moment recall a promise to surrender possession. The only two ways in which the statutory protection comes to an end are :<sup>80</sup>

- (1) By the handing back of the premises to the landlord;
- (2) By the order of a competent Court that is to say a Court acting with jurisdiction."

It is conceded that although the respondent wrote the letter P1 dated 31. 03. 1980, the premises in question was not handed over to the appellant. Even if the respondent had wanted to relinquish the tenancy at the time he wrote the letter P1, and if the owner has accepted it, still it would be necessary for the premises to be physically handed over by the respondent to the appellant, for the statutory protection to come to an end. Under a contract of tenancy,<sup>90</sup> the owner and the tenant agree and accept the terms of tenancy. Therefore, although the respondent may have contemplated relinquishing the premises as revealed in P1, he could, nevertheless, unilaterally change his mind and reverse his decision, if he had not handed over the premises to the landlord. In such circumstances the document marked P1 by itself does not serve to terminate the tenancy.

It is common ground that the premises in question, continued to be in the possession of the respondent and the letter dated 05. 07. 1980 (P4) sent by the respondent to the appellant informing her that, "*I continued and still remain the lawful monthly tenant of<sup>100</sup> the premises*", with a cheque for the rent for months of April, May and June, 1980, establish that the respondent had not handed over the premises to the appellant. In such circumstances it cannot be said that the tenancy agreement between the appellant and the respondent had come to an end.

For the aforementioned reasons, I hold that the clear intention of the respondent was to continue to occupy the premises in question without handing it over to the appellant. The appeal is, accordingly, dismissed and the judgment of the Court of Appeal dated 29. 01. 1997 is affirmed.110

There will be no costs.

**S. N. SILVA, CJ.** – I agree.

**ISMAIL, J.** – I agree.

*Appeal dismissed.*