
**AMARASEKERA
VS
MOHAMED**

COURT OF APPEAL.
WIMALACHANDRA, J.,
CALA 105/2002 (LG).
DC COLOMBO 9174/RE.
AUGUST 27, 2004.
AUGUST 27, 2004.
JANUARY 25, 2005.
JUNE 9, 2005.

Evidence Ordinance, Sections 3 and 7 – Fact in issue – Relevant facts to prove a fact in issue – Housing and Town Improvement Ordinance – Unauthorized constructions – Rent Act, No. 07 of 1972 – Facta probans – Factum probandum – Whether evidence regarding former tenants is a relevant fact to prove the fact in issue, when issue is whether the premises were constructed before the Housing Development Ordinance came into operation ?

The plaintiff-respondent instituted action against the defendant respondent for ejection from the premises in suit on the ground of reasonable requirement. The plaintiff pleaded that the premises was an unauthorized premises under the provisions of the Housing and Town Improvement Ordinance and hence the provisions of the Rent Act would not apply. After the plaintiff's case was closed and when leading the defendant's evidence his Counsel questioned the defendant about the former tenants of the premises in suit. This was objected to on the ground that no issue had been raised in respect of the previous tenants and also on the ground that no questions on that matter had been put to the plaintiff when he was giving evidence. This objection was upheld by Court. The defendant-petitioner sought leave to appeal from the said order with leave being granted.

HELD:

- (1) The fact in issue in this case is whether the premises in suit was in existence before the Housing and Town Improvements Ordinance came into operation.

Per Wimalachandra, J.

The fact that there had been tenants in the said premises before the said Ordinance came into operation is a relevant fact. In my mind the two facts are relevant to each other and it falls within the definition of relevance.

- (2) The word “relevant” means that any two facts to which it is applied are so related to each other that according to the common course of events one taken either by itself or in connection with other facts prove or renders probable the past, present or future existence or non existence of the other.
- (3) In the instant case the fact in issue is whether the premises in suit was contracted before the Housing and Town Improvement Ordinance came into operation (*factum probandum*) this fact intended to prove the fact in issue is whether the tenants had been in the premises before the said Ordinance came into operation which is relevant to prove the fact in issue (*facta probans*).
- (4) Relevance is based on reason and common sense. It is a matter of probability. The facts that a court has to consider are either facts in issue or relevant facts.
- (5) Evidence can be given to prove a fact in issue or to prove facts which are so connected to the facts in issue.

Per Wimalachandra, J.

“In order to prove the fact in issue that the premises had been constructed before the Housing and Town Improvement Ordinance came into operation the evidence with regard to the former tenants is a relevant fact to prove the fact in issue.”

APPLICATION for Leave to Appeal from an order of the District Court of Colombo with leave being granted.

Manohara R. de Silva for defendant–petitioner.

Rohan Sahabandu for plaintiff–respondent.

Cur.adv. vult.

February 24, 2006.

WIMALACHANDRA, J.

The plaintiff–respondent (plaintiff) instituted this action in the District Court of Colombo against the defendant–appellant (defendant) for ejection from the premises in suit on the ground that he required the premises. The plaintiff pleaded that the premises was an authorised premises under the provisions of the Housing and Town Improvement Ordinance and hence the provisions of the Rent Act, No. 07 of 1972 would not apply as a result of the premises being unauthorised. The plaintiff also pleaded that he terminated the contract of tenancy by letter dated 27.01.1999 and since the defendant did not hand over the premises in vacant possession by 31.03.1999 as demanded, the plaintiff instituted this action to evict him from the premises in suit.

At the trial, after the plaintiff's case was closed, the defendant started giving evidence. In leading the defendant's evidence when his counsel questioned the defendant about the former tenants of the premises in suit, the counsel for the plaintiff objected to the said question being put to the defendant on the ground that the defendant had not raised an issue in that regard and the plaintiff was not questioned about the previous tenants, the defendant is not entitled to give evidence with regard to previous tenants of the premises in suit.

The Court of Appeal granted leave. The main issues were whether the premises in suit was given to the defendant before the Housing and Town Improvement Ordinance was passed as alleged by the defendant or whether the premises in suit is an unauthorised building under the provisions of the aforesaid Ordinance as contended by the plaintiff.

The learned counsel for the plaintiff submitted that since the defendant had only pleaded that the premises in suit was constructed before the Housing and Town Improvement Ordinance came into operation, the aforesaid question put to the defendant by his counsel in examination-in-chief is not relevant to the fact in issue which is, whether the house was built before or after the Housing and Town Improvement Ordinance came into operation. Issue No. 10 has been raised on this question. It reads as follows :

“මෙම නඩුවට අදාළ ස්ථානය විකිකරු(ටදී) ඇත්තේ නිවාස සහ නගර සංවර්ධන ආඥාපනත බල පැවැත්වීමට ප්‍රථමද ?”

Evidence can be given to prove a fact in issue in a case or to prove facts which are so connected to the facts in issue. Section 5 of the Evidence Ordinance states thus :

“Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant and of no others.”

Section 3 of the Evidence Ordinance states that “one fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of the Ordinance relating to the relevancy of facts.”

The word ‘relevant’ “means that any two facts to which it is applied are so related to each other that according to the common course of events one taken either by itself or in connection with other facts proves or renders probable the past, present or future existence or non existence of the other.” ‘Relevant’ strictly speaking, means admissible in evidence. (Stephen’s Digest of the Law of Evidence, 12th edition, Art. 1. – quoted in the book “Law of Evidence” by E. R. S. R. Coomaraswamy at page 58).

Relevance is based on reason and common sense. It is to be observed that it is a matter of probability. The word “relevant” used in the Evidence Ordinance has two meanings. They are, “as admissible” and “as

connected". Therefore, certain facts even though logically relevant are inadmissible. They are, hearsay, opinions of witness, character etc. The facts that a Court has to consider are either facts in issue or relevant facts.

With regard to this appeal the fact in issue is whether the premises in suit was in existence before the Housing and Town Improvements Ordinance came into operation. The fact that there had been tenants in the said premises before the said Ordinance came into operation is a relevant fact. In my mind these two facts are relevant to each other and it falls within the aforesaid Stephen's definition of relevance.

Section 7 of the Evidence Ordinance states thus :

"Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened or which afforded an opportunity for their occurrence or transaction, are relevant."

Section 7 of our Evidence Ordinance is identical to the section 7 of the Indian Evidence Act. Therefore I can refer to the Indian judgments and commentaries of Indian jurists.

Ratnalal and Dhirajlal in "The Law of Evidence" 19th edition, 1997 at page 38, referring to section 7 of the Evidence Act has made the following comment.

"This section admits very large class of facts connected with facts in issue or relevant facts, though not forming part of the same transaction Evidence relating to collateral facts is admissible when such facts will, if established, establish reasonable presumption as to the matter in dispute and when such evidence is reasonably conclusive."

The subsequent fact is relevant and these two facts are related to one another and it falls within the aforesaid Stephen's definition of relevance.

The fact in issue is the fact to be proved, which is called *factum probandum*, while the relevant facts are the facts by which such proof is to be adduced which are called *facta probans*. In the instant case the fact in issue is whether the premises in suit was constructed before the Housing and Town Improvement Ordinance came into operation. The fact intended to prove the fact in issue is whether the tenants had been in the premises in suit before the said Ordinance came into operation, which is relevant to prove the fact in issue.

Section 7 of the Evidence Ordinance admits facts connected with facts in issue or relevant facts. Evidence relating to relevant facts if established, establish reasonable presumption as to the matter in dispute, the fact in issue.

In the circumstances in order to prove the fact in issue in the aforesaid issue No. 10, that the premises had been constructed before the Housing and Town Improvement Ordinance came into operation, the evidence with regard to the former tenants is a relevant fact to prove the fact in issue.

For these reasons I set aside the said order of the Additional District Judge dated 05.03.2002 and direct the learned Additional District Judge to allow the appellant to adduce evidence in respect of the previous tenants of the premises in suit. Accordingly the appeal is allowed with costs.

Appeal allowed.

District Judge directed to allow the defendant to adduce evidence in respect of previous tenants.