DALUWATTE
v.
PREMALATHA

SUPREME COURT
G. P. S. DE SILVA, CJ.,
WIJETUNGA, J. AND
GUNASEKERA, J.
S.C. APPEAL NO. 30/95
C.A. NO. 738/92 (F)
D.C. HAMBANTOTA CASE NO. 158/RE
FEBRUARY 2ND, MARCH 19TH, 1998.

Rent and ejectment – Excepted premises – Regulation 3 in the schedule to the Rent Act.

The plaintiff sought to eject the defendant from a distinct and separate unit occupied by her for very many years and separately assessed prior to 1.1.1968. Having regard to the annual value the premises occupied by the defendant were "rent controlled". On 1.1.1968 the local authority "consolidated" the defendant's unit with two other distinct units – one let to one Jamis, the other occupied by the plaintiff herself, each of which was also separately assessed prior to 1.1.1968 and "rent controlled", being below the annual value of Rs. 1,000/-. The "consolidated" unit was assessed at Rs. 1,338/- which was the value that made any premises "excepted premises" in terms of regulation 3 in the schedule to the Rent Act. However, there was no physical or structural alterations whatsoever to the units and they continued to remain distinct and separate.

Held:

The assessment of the entire premises after consolidation of the three premises had no application to the premises occupied by the defendant and from which the plaintiff sought to eject the defendant.

Cases referred to:

1. *Ansar v. Hussain* C.A.L.R. (1986) vol. I – 365.
2. *Hewavitharana v. Ratnapala* (1988) 1 Sri LR 240.
3. *Plāte Ltd. v. Ceylon Theaters Ltd.*, 75 NLR 128.
4. *Weerasena v. Perera* (1991) 1 Sri LR 121, 126.

APPEAL from the judgment of the Court of Appeal.

P. A. D. Samarasekera, PC with *Keerthi Sri Gunawardena* for the plaintiff-appellant.

Faisz Musthapha, PC with *W. Dayaratne* and *M. S. M. Suhaid* for the defendant-respondent.

Cur. adv. vult.

April 03, 1998.

G. P. S. DE SILVA, CJ.

The plaintiff instituted these proceedings against the defendant who was her tenant seeking, *inter alia,* to eject her from premises bearing assessment No. 10, Kirinda Road, Tissamaharamaya. The action was filed on 08.12.87. The basis of the action was that the premises in suit were "excepted premises" within the meaning of regulation 3 of the "Regulations as to Excepted Premises" set out in the schedule to the Rent Act. The plaintiff pleaded, *inter alia*, that the premises were business premises situated within the local limits of the Town Council of Tissamaharamaya; the annual value of the premises as on *1.1.68* exceeded Rs. 1,000/-; that the premises were accordingly "excepted premises" within the meaning of the Rent Act. The defendant in her answer denied the plaintiff's claim and took up the position that the premises were not "excepted premises" and further pleaded that the annual value of the premises was only Rs. 777/-.

At the conclusion of the trial the District Court held that the premises were not "excepted premises" and dismissed the plaintiff's action. The plaintiff's appeal to the Court of Appeal was unsuccessful as the Court of Appeal also took the view that the premises in suit were not "excepted premises". Hence the present appeal by the plaintiff to this court.

The only question which arises for decision on this appeal is whether the premises in suit are "excepted premises", within the meaning or the Rent Act. If the premises are "excepted premises", then the plaintiff is entitled to judgment as prayed for.

The premises consists of 3 separate units occupied by three different persons. There is one boutique occupied by the defendant and another separate unit let to one Jamis; the 3rd unit was occupied by the plaintiff herself. These three separate units had at one time assessment numbers 68, 69 and 70 and prior to 1968 the assessment numbers were changed to 8, 10 and 1/10. However, on *1.1.68* the

assessing authority "consolidated" the three separate units and assessed the entire premises as a single unit of assessment assigning the No. 10 and specifying the annual value at Rs. 1,338/-. At this point it is helpful to set out the terms of regulation 3 in the schedule to the Rent Act.

> "3. Any business premises (other than premises referred to in regulation 1 or regulation 2) situated in any area specified in column 1 hereunder shall be excepted premises for the purpose of this Act if the annual value thereof as specified in the assessment made as business premises for the purpose of any rates levied by any local authority under any written law and in force on the first day of January, 1968, or, where the assessment of the annual value thereof as business premises is made for the first time after the first day of January, 1968, the annual value as specified in such assessment, exceeds the amounts specified in the corresponding entry in column II:
>
> | 1
Area | 11
Annual Value |
> |---|---|
> | ..... | ..... |
> | ..... | ..... |
> | ..... | ..... |
> | Town within the meaning of the Town Councils Ordinance | Rs. 1,000 |

There is no dispute between the parties on the following matters: The premises presently assessed as No. 10 consisted of 3 separate and distinct units long prior to 1968. These units continued to be *separately assessed* until the end of 1967 and *the annual value of each of the units was below Rs. 1,000/-.* In other words, each of the 3 units prior to 1.1.68 was "rent controlled" and separately assessed. It was only on 1.1.68 that there was a "consolidation" and the 3 units were collectively assigned one number (No. 10). Although the assessment as on 1.1.68 specified the annual value as Rs. 1,338/-. Mr. Musthapha for the defendant-respondent relevantly emphasised that there were no physical or structural alterations whatsoever to the three units. The units continued to remain distinct and two of the units continued to be the subject matter of two separate tenancies.

Mr. Samarasekera for the plaintiff-appellant submitted that in applying regulation 3 of the schedule to the Rent Act the basic questions is, what is the relevant annual value that must be taken into account? Mr. Samarasekera contended that in answering this question the court has to first consider whether the premises were assessed on 1.1.68. If the premises were assessed on 1.1.68, the next question is whether the annual value exceeded Rs. 1,000/-. Mr. Samarasekera urged that on the facts there is no doubt that the premises were assessed on 1.1.68 and that the annual value exceeded Rs. 1,000/-. Therefore the premises in suit were excepted premises. Mr. Samarasekera further emphasised that under no circumstances can the court consider an assessment made prior to 1968 as regulation 3 specifically sets out the base year as the "1st day of January, 1968". In short, counsel's submission was that when the 3 units were consolidated and assessed on 1.1.68 under No. 10, the assessment as on 1.1.68 conclusively decided the question whether the premises were excepted premises or not. Since the annual value as assessed on 1.1.68 exceeded Rs. 1,000/- the premises were excepted premises. It was the submission of Mr. Samarasekera that both the District Court and the Court of Appeal were in error in taking into account an assessment that existed prior to 1968 and in ignoring the assessment as on 1.1.68. What is material is the premises assessed and not the premises let and as the premises assessed on 1.1.68 is above Rs. 1,000/-, the premises ceased to be subject to "rent control". The pith and substance of Mr.Samarasekera's argument was that premises No. 10, Kirinda Road, Tissamaharamaya (the premises in suit) were assessed by the local authority for purposes of levying rates and the annual value as on 1.1.68 was fixed at Rs. 1,338/-. Thus the premises had an annual value "specified" and "in force" on 1.1.68 exceeding Rs. 1,000/-. The premises therefore were excepted premises.

However, the present action is to eject the defendant from a distinct and separate unit occupied by her for very many years prior to 1.1.68. Besides the fact that the unit occupied by the defendant is a distinct and a separate unit, there is the all-important fact that the said unit was separately assessed for many years prior to 1.1.68. Moreover, having regard to the annual value, the premises occupied by the defendant were "rent controlled". It is of significance to note that what was assessed on 1.1.68 as excepted premises were not the premises occupied by the defendant. What was assessed on 1.1.68 as excepted premises consisted of the premises in occupation of the defendant

as well as two other distinct units which were also separately assessed prior to 1.1.68. In other words, the local authority having "consolidated" three distinct and separate units assigned one number and assessed the "consolidated unit" at an annual value of Rs.1,338. As stated earlier it is common ground (*a*) that there were no physical or structural alterations whatsoever to the units; (*b*) the 3 units continued to remain distinct and separate; (*c*) two of the units continued to remain the subject matter of two separate tenancies. Thus it is manifest that the "consolidation" that took place on 1.1.68 was purely a national consolidation devoid of any physical or structural alterations which could have had an impact on the valuation and assessment. In short, the "consolidation" as on 1.1.68 did not give birth to "new premises". *Ansar v. Hussain*[1]; *Hewavitharana v. Rathnapala*[2]. I am therefore of the view that the Court of Appeal was correct in concluding that the assessment of the entire premises after consolidation of the three premises has no application to the premises occupied by the defendant and from which premises the plaintiff seeks to eject the defendant.

Mr. Samarasekera relied strongly on the case of *Plāte Ltd. v. Ceylon Theaters Ltd.*[3] That was a case where the issue was whether the occupier of a part of the premises which were admittedly excepted premises is entitled to claim the protection of the Rent Restriction Act when sued in ejectment. Samarawickrema, J. said: "The scheme of the act suggests that it was intended that the criterion for deciding whether the premises were excepted premises was to be the amount of the annual value assessed by the local authority. Once a premises were excepted premises on the application of that test there is no support to be found in the Act for the position that a part of those premises could be premises to which the act applied *unless that part was separately assessed"* (emphasis added). In Plāte's case the portion occupied by the tenant *had not been separately assessed.* Therefore Plāte's case can be clearly distinguished from the facts of the case before us for the reason that the defendant in the present case is in occupation of a unit which had been separately assessed and which was "rent controlled" prior to 1968.

Furthermore, Mr. Samarasekera submitted that the decision in *Ansar v. Hussain (supra) and Hewavitharana (supra)* have no relevance to the instant case, since those were cases concerned with the question whether the assessment of the premises in a particular

year constituted the "first assessment" of the premises, that is, premises which have been assessed for the first time *after 1.1.68.* But in the case before us, counsel argued, there was an assessment in existence and operative on *1.1.68* and is therefore a matter which falls within the first limb of regulation 3. In my view the approach of Wanasundera, J. to the question of "subdivision" or "consolidation" of premises is equally relevant to the present case. It is an approach which Mr. Musthapa rightly characterised as "an empirical approach" which found favour with Dheeraratne, J. in *Hewavitharana v. Ratnapala* (*supra*). Referring to the view taken by Wanasundera, J. in Ansar's case (*supra*) Dheeraratne, J. stated in *Weerasena v. Perera*[4].

> "The third, (approach) is that reflected in the judgment of Wanasundera, J. in *Ansar v. Hussain*, a via media through which the court will not only look at the mere fact of a separate assessment, but also, at the extent and significance of the change involved and the impact of that change on the valuation and assessment. This last approach, commends itself to me as a safeguard both against capricious assessments made by rating authorities affecting rights of parties to the letting and also against possible manipulations of the assessments by interested parties with intent to give undue advantages either to landlords or to tenants. (*Hewavitharana v. Rathnapala)* (supra).

For these reasons the judgment of the Court of Appeal is affirmed and the appeal is dismissed with costs fixed at Rs. 1,000.

WIJETUNGA, J. – I agree.

GUNASEKERA, J. – I agree.

Appeal dismissed.