

SUPREME COURT

Hewamallika
V.
Soma Munasinghe

S.C. 29/81 — CA 325/73 (F) — DC Colombo No. 12609/L

Section 18 Rent Restriction Act — Spouse deemed to be tenant on husband's death

One Janderis Kodithuwakku Hewamallika gifted premises No. 17 Hyde Park Corner, Slave Island to the plaintiff his son in 1955. But after the gift was made Janderis Kodithuwakku rented out the premises to H.B. Wilson. In 1968 Janderis Kodithuwakku terminated the tenancy and instituted action in the Court of Request for ejection. But before the trial the tenant H.B. Wilson died and the case was abandoned. The widow of Wilson informed Janderis Kodithuwakku under Section 18 of Rent Restriction Act that she was continuing as tenant.

The Plaintiff instituted this action for declaration of title, recovery of possession and damages.

Held that Defendant (Wilson's widow) must be deemed to be a statutory tenant succeeding to her husband's tenancy on his death, and a vindicatory suit does not lie.

APPEAL from judgment of Court of Appeal.

Before: Wanasundera J., Wimalaratne J., and Soza J.

Counsel: H. L. de Silva, Senior Attorney-at-Law with Peter Jayasekera for Defendant-Appellant.
D. R. P. Gunatilake for Plaintiff-Respondent.

Argued on: 4.3.1982

Cur. adv. vult.

Decided on: 8.4.1982

SOZA J.

The suit before us has been constituted as a vindicatory action filed by the plaintiff against the defendant for a declaration of title to premises No. 17, Hyde Park Corner, Slave Island, Colombo and for recovery of possession of them along with damages at Rs. 55.48 per mensem.

The plaintiff proceeds on the footing that to begin with the defendant's husband H.B. Wilson Silva (also known as H.B. Wilson) was a tenant of these premises under the plaintiff's father Jandiris Kodituwakku Hewamallika who was acting for and on behalf of the plaintiff. The plaintiff's claim that his father was acting for him was made for the first time in the plaint filed in this case. Indeed this claim is not supported by any of the circumstances that have come to light in this case and the learned District Judge rightly rejected it. Learned Counsel who appeared for the plaintiff described this claim of agency as a gift in the case to the defendant. Obviously the defendant fears the plaintiff even when he is bringing gifts. Giving no hint whatsoever that he is acting for his son, the plaintiff's father terminated the tenancy of Wilson by notice dated 13.11.1968 and thereafter sued him for arrears of rent and ejection, in case No. 270 of the Court of Requests of Colombo. After summons was served but before answer was filed, Wilson died on 28.6.1969 and that action was not proceeded with. At this time the Rent Restriction Act No. 29 of 1948 was in force and Wilson's widow the present defendant on 24.10.1969 gave notice under section 18 of that Act to the plaintiff's father that she proposed to continue in occupation of the premises as tenant thereof but he refused to acknowledge her as his tenant by his letter D5.

The plaintiff took up the position that as Wilson at the time of his death was a statutory tenant whose contractual tenancy had been already terminated, his widow was not entitled to take advantage of the provisions of section 18 of the Rent Restriction Act. But this question has been now settled by the decision in *Karunaratne v Fernando*¹ where a bench of two Judges held that an heir of a statutory tenant could avail himself of the provisions of section 18 provided he had the stipulated qualifications. The contrary view laid down in *Hensman v Stephen*² decided by a single Judge was held to be wrong. Indeed the decision in *Hensman v Stephen* if allowed to stand will defeat the very object of the rent laws. As Sirimane J said in *Karunaratne's case* (p. 461).

“The key note of the legislation introduced by section 18 is the protection of the home after the death of the tenant who was protected by the Act.”

The expression tenant must be given a broad construction which will carry out the intention of Parliament. So far as continuance of

the tenancy after the death of the tenant goes it is only reasonable that a statutory tenancy is endowed with qualities of tenancy and perdurability not less than those of the contractual tenancy out of which it arose. Indeed section 36(1) of the Rent Act No. 7 of 1972 has adopted the interpretation laid down in *Karunaratne's* case and enacted that "a person shall be deemed to be the tenant of any premises notwithstanding that his tenancy of such premises has been terminated by the expiry of the notice of the termination of the tenancy given by the landlord thereof, if at the time of his death he was in occupation of such premises". I have no difficulty in agreeing with the purposive interpretation adopted by Sirimane J in *Karunaratne's* case.

Accordingly the present defendant must be deemed to be a tenant of the premises with effect from 1.11.1969 by operation of section 18(2) of the Rent Restriction Act under the plaintiff's father despite the latter's refusal to acknowledge her as such by his letter D5.

It is in this background that we must examine the plaintiff's rights. Jandiris Kodituwakku Hewamallika had gifted the premises in suit to his son the plaintiff in 1955. So that at the time Jandiris Kodituwakku Hewamallika let out the premises to defendant's husband Wilson, the plaintiff was the real owner of the premises. At no time did the plaintiff himself request Wilson or the defendant to attorn to him. Hence no blame can attach to the defendant for any failure on her part to attorn to the plaintiff. The question of Jandiris Kodituwakku Hewamallika being the agent of the plaintiff is irrelevant to the question before us. In fact at the time the plaintiff filed the present suit the defendant was well within her rights to regard the plaintiff's father who was living at the time as her landlord.

As it would appear the plaintiff filed the present action without any prior demand. Hence the defendant's pleading that she is not aware of the plaintiff's title is justified. The plaintiff really stands in the shoes of his father as landlord and is therefore not entitled to bring a suit to vindicate title. Presently the defendant has acknowledged plaintiff's title. It is not denied that rents due in respect of these premises are being paid in plaintiff's name to the Colombo Municipality. The defendant's contention that she is the tenant of these premises

under the plaintiff is entitled to succeed. She is entitled to the protection of the Rent laws. In any event her tenancy has not been terminated. In these circumstances a vindicatory suit is misconceived and does not lie

I therefore allow this appeal and set aside the judgment of the Court of Appeal and District Court. Let decree be entered dismissing plaintiff's action with costs here as well as in the Court of Appeal and in the District Court.

WANASUNDERA J. — I agree.

WIMALARATNE J. — I agree.

Appeal allowed

References:

1. (1970) 73 NLR 457
2. (1953) 55 NLR 89.