

VADIVEL
v
KAMALANATHAN

COURT OF APPEAL
DISSANAYAKE, J.
C.A. 406/98 (F)
DC BATTICALOA 4246/L
DECEMBER 3, 15, 2003
FEBRUARY 2, 2004

Leave and licence – Occupation – Coercion by Police to accept money as rent and issue receipts – Contract of tenancy created? – Consent of parties necessary? – Constitution Art 24 – Court proceedings in the North and East Language?

The original defendant-appellant entered to property as a licensee. The plaintiff-respondent wanted the property back, and sought the assistance of the Police who had given the defendant three months time to vacate. However the plaintiff-respondent was coerced by the Police to accept money as rent and issue receipts. The original defendant claimed tenancy. The District Court held with the plaintiff-respondent.

- Held**
- (1) Consent is a necessary element in every contract, and if the parties are not agreeable, whether about the nature of the transaction, or about the price or some other point there is no completed contract.
 - (2) Mere acceptance of rents does not create a tenancy, it is manifest that for a contract of tenancy to exist consent of parties is one of the essential elements.
 - (3) Payments of money and issue of receipts have been only as a result of coercion by the Police. The attendant circumstances do not indicate that there had been already a tenancy agreement or at least that a tenancy agreement had been created by the said acts.

Per Dissanayake, J.,

“In terms of Article 24 of the Constitution Tamil language being a national language and is the language in Court procedure in the North/East Province, the answer filed in Tamil in the District Court of Batticaloa is the one that has to be considered and not the English translation”.

APPEAL from the judgment of the District Court of Batticaloa.

Cases referred to:-

- (1) *Fernando v Samaraweera* – 52 NLR 278
- (2) *Perera v Magi Nona Hamine* – 77 CLW 68
- (3) *Kurukulasuriya v Ranmenika* – 1990 - 1 Sri LR 331
- (4) *Sivagnanda v Bishop of Kandy* – 55 NLR 132
- (5) *Ninjam v Musthapa* – 1981 - 1 Sri LR 58 at 63 and 64.

Sunil Cooray for defendant-appellant.

V. Puvitharan for plaintiff-respondent.

Cur. adv. vult.

March 12, 2004

DISSANAYAKE, J.

This is an appeal from the judgment of the learned district judge of Batticaloa entering judgment in favour of the plaintiff-respondent in an action for declaration of title and ejection of the defendant-appellant, on the ground that he is a trespasser in unlawful occupation, however the defendant-appellant claimed tenancy. 01

It was the position of the plaintiff-respondent that he was seized and possessed of or otherwise lawfully entitled to the property more fully described in the schedule to the plaint under and by virtue of deed No. 6647 dated 18.01.1936 (P1). The land in suit was a bare piece of land.

The defendant-appellant had requested the plaintiff-respondent to permit him to occupy the said land for one year and to set up a small boutique in the premises to which the plaintiff-respondent had agreed. 10

The original defendant had entered the property in suit on 25th of June 1987 as a licensee and had put up a temporary boutique and had started to occupy the land in suit with the leave and licence of the plaintiff-respondent.

At the end of one year, the plaintiff-respondent had requested the original defendant to hand back the property. The original defendant had refused to hand back the said property and is in unlawful occupation of the property since 26.06.1988, causing damages in a sum of Rs. 7500/- and continuing damages of Rs. 100/- per month. 20

The plaintiff-respondent had sent a letter demanding that the original defendant handover the property in suit, which request had been not heeded by the original defendant. The plaintiff-respondent had sought the assistance of the Batticaloa Police by way of a complaint made by him.

The original defendant was given 3 months time to vacate the land by the Police, however he continued to occupy the land, regardless. Hence the plaintiff-respondent had to seek his legal remedy by way of this action. 30

Under cross-examination, it was suggested that the premises had been given to the original defendant on rent and not by way of leave and licence as contended by him in his evidence. The plaintiff-respondent was confronted with 2 receipts one dated 23.10.93 for Rs. 2000/- (D2) and the other dated 15.11.93 for Rs. 1500/- (D1) on which he is purported to have accepted moneys from the original defendant as rent from June 1989.

The plaintiff-respondent admitted to having given the 2 receipts, but stated that they were given because he was coerced by 2 police officers by the name of Soundrarajah and Shanmugarasa of the Batticaloa Police Station to issue the said receipts. 40

Explaining the circumstances under which he placed his signature on the said documents, he stated that he had sought assistance of the Police to eject the original defendant, because he had refused to vacate the land in suit. The 2 police officers concerned had forced him to accept Rs.3500/- and issue receipts D1 and D2 to the original defendant. They had done so in the guise

of helping the plaintiff-respondent in regaining his land. Further it has been told by these 2 officers that if he did not accept the said money, he will have no proof that the land belonged to him. 50

The plaintiff-respondent had instituted this action in 1994. Explaining the delay in coming to Court, he had said that he had suffered from rhuatic illness and had been bed ridden for some time. He had instituted this action, no sooner he was able to walk about with assistance of another, after medical treatment. He stated that he was assisted by another to attend Court even on the day his evidence was recorded.

The original defendant in paragraph 3 of the answer which is in Tamil at page 39 of the brief, had admitted the plaintiff-respondent's position that he entered the premises with leave and licence of the plaintiff. However it is further stated in paragraph 3 that after having entered with the leave and licence the contract of tenancy was created. 60

However it appears that the English translation paragraph 3 is completely different. It states that the original defendant denies that he went into occupation of the property in suit with leave and licence.

It is to be observed that in terms of article 24 of the constitution Tamil language being a national language and is the language in Court proceedings in the North, East province. Hence the answer filed in Tamil is the one that has to be considered as the answer tendered by the original defendant and not the English translations. 70

In view of the admission made in the answer and in evidence by the original plaintiff that he had entered the premises in suit with the leave and licence of the plaintiff-respondent, which is the plaintiff-respondent's case, the burden of establishing the tenancy agreement fell fairly and squarely on the original defendant.

Therefore it was incumbent on the original defendant to establish that:- 80

- a) he had entered into an agreement with the plaintiff-respondent.
- b) that the alleged agreement was governed by the Rent Act.

It is interesting to note that the original defendant had failed to produce any evidence to prove that the premises in suit was governed by the Rent Act.

The original defendant relied heavily on the purported two receipt D1 and D2 issued by the plaintiff-respondent, to establish tenancy.

90

The plaintiff-respondent who was a feeble old woman past her 60th year emphatically stated that at the Batticaloa Police Station she was forced to issue the said 2 receipts and was coerced to accept the money. She had named the 2 Police officers who coerced her to do so.

The original defendant too in his evidence had admitted that the money was given at the Police Station on the direction of the police officers. He stated that initially she refused to accept the money but had subsequently had accepted the money because police officer Soundararajan had wanted her to accept same. He further stated that the receipts were given because she was forced by the police to do so.

100

The original defendant in his evidence in chief stated that the aforesaid moneys were paid at the police station after the institution of the action. He stated when he requested that he be issued with receipts it was police officer Soundararajan who had promised to see that receipts are issued.

He went on the state further that out of Rs. 2500/- after payment of Rs. 1500/- to the plaintiff-respondent he had paid the balance sum to police officer Soundararajan. He further conceded that the receipts were written by a police officer by the name of Arul.

110

The aforesaid evidence of the original defendant clearly demonstrates that whatever payments that have been made, were all made at the police station. And they had been made not in pursuance of any tenancy agreement but were done at the instance of the said 2 police officers. Payments of money and the issue of receipts have been issued only as a result of some coercion by the police.

Thus it is manifest that the aforesaid manner in which the money had been paid and receipts obtained and the attendant

120

circumstances do not indicate that there had been already a tenancy agreement or at least that tenancy agreement had been created by the said acts.

At this stage it is pertinent to refer to the work. "The law of property in Sri Lanka" Volume Two (landlord and tenant) by professor G.L. Pieris at page 43 under sub heading 11 in chapter 3 dealing with "Essential elements of the contract." , essential characteristics of the contract states:

"Van der Lineden enumerates the essential characteristics of the contract of letting and hiring as follows:-

130

- 1) a thing capable to being let on hire.
- 2) the assurance of the lessee or the hirer of the definite use or enjoyment of the property for a limited period.
- 3) a definite rent or hire payable generally in money, although sometimes part of the rent is paid in produce.
- 4) The mutual consent of the lessor and lessee The parties to the contract must of course be capable of contracting their consent must be freely given, and the purpose of the contract must not be illegal.

Under sub heading 111, "Reality of consent" at page 46 it is stated "....." Consent is a necessary element in every contract, and if the parties are not agreed - whether about the nature of the transaction, or about the price or on some other point there is no completed contract."

140

Therefore it is manifest that for a contract of tenancy to exist consent of parties is one of the essential elements.

It is settled law that mere acceptance of rents does not create any tenancy. Vide *Fernando v Samaraweera* (1) *Perera v Magi Nona Hamine* (2) *Kurukulasuriya v Ranmenika* (3) *Sivagnonda v Bishop of Kandy* (4) and *Ninjam v Musthapa* (5) at 63 and 64.

150

There is unequivocal evidence in this case to establish that, all the payment of rents had been made at the Batticaola Police Station, under the direction of the Police, and under coercion of 2 police officers the plaintiff-respondent was forced to accept the money and issue receipts D1 and D2.

Therefore I am of the view that the original defendant has failed to establish that there was a contact of tenancy between him and the plaintiff-respondent and as such he was protected by the Rent Act.

The evidence reveals that the original defendant has entered 160 the premises in suit with the leave and licence of the plaintiff-respondent. Subsequently the original defendant had refused to hand back the possession of the premises in suit.

Since the original defendant had sought to challenge the aforesaid leave and licence and had taken a different stand, he has thereby challenged the rights of the plaintiff-respondent. Therefore the original defendant had forgone his right to have notice of termination of licence sent by the plaintiff-respondent. Therefore the plaintiff-respondent was entitled to have and maintain this action. 170

The learned District Judge has rightly entered judgment in favour of the plaintiff-respondent.

There is no basis to interfere with the judgment of the learned district judge.

The appeal of the substituted-defendant-appellant is dismissed with costs fixed at Rs. 5000/-.

Appeal dismissed.