

1978 Present : Samarakoon, C.J., Sharvananda, J.  
and Ratwatte, J.

FREDDIE PATHIRANA, Defendant-Appellant

and

K. M. SOMALATHA de SILVA, Plaintiff-Respondent

S. C. No. 48/75 (F)—D. C. Colombo 2115/ZL

*Lease—Whether letting of premises or a business—Objects sought to be achieved—Need to look at totality of provisions in document.*

*Business Names Ordinance (Cap. 149), sections 2, 9—Requirement of registration of business name where not that of the person carrying on the business—Non-enforceability of contract for default—Whether provisions applicable.*

*Held:* (1) That in deciding the question as to whether a document was a lease of a business or the letting of a premises, one has first to look at the totality of its provisions and the object it seeks to achieve. Secondly, whether the facts established in evidence show that, in fact, it has achieved something different and whether the document in question was only a cover for it.

(2) That accordingly, in the present case, the evidence showed that what was let was a bakery business and not the premises itself.

(3) That section 9 of the Business Names Ordinance (Cap. 149) had no application to this case inasmuch as the agreement in question expressly forbade the defendant to use the business name under which the lessors had carried on business. Accordingly, what was let was a business without a business name as defined by the ordinance and the requirement of registration did not arise. The agreement was therefore enforceable by action.

Cases referred to :

*Charles Appuhany v. Abeysekera*, (1954) 56 N.L.R. 243 ; 52 C.L.W. 50.

*Jayasinghe v. Hussein*, (1955) 56 N.L.R. 381.

*Andiris Appuhany v. Kuruppu*, (1963) 65 N.L.R. 21.

**A**PPEAL from a judgment of the District Court of Colombo.

I. G. N. de Jacolyn Seneviratne, with A. Sivagurunathan, for the defendant-appellant.

H. W. Jayewardene, Q. C., with D. R. P. Goonetilleke and Miss P. Seneviratne, for the plaintiff-respondent.

*Cur. adv. vult.*

August 7, 1978. SAMARAKOON, C.J.

The plaintiff in this case is the widow of one M. S. de Silva. He died in 1966. During his lifetime he owned and ran a bakery business called 'Somadisi Bakery' at premises No. 64 and 66, Deans Road in Maradana. By an agreement in writing dated 18th June, 1966, signed by the plaintiff and the defendant (produced marked P1), the plaintiff gave the defendant "the said premises together with the said bakery business and the furniture and fittings thereto belonging" for a period of two years from 1st June, 1966. The schedule to P1 contains a detailed list of a large number of items of furniture and equipment used in a bakery business, showing that these premises was a well-equipped bakery. Clause 1 stipulated a payment of Rs. 300 per mensem. Clause 6 stated that the defendant (described as assignee) shall not use the name "Somadisi Bakery" Clause 9 stated that the assignee shall not sublet the premises. The plaintiff instituted this action after the two-year period lapsed as the defendant had failed to vacate the premises upon the expiry of the lease. The plaintiff also alleged that the defendant had sublet the premises to one Haniffa contrary to the terms of the lease. The defendant denied all allegations and pleaded that the document P1 was not a lease of a business but, in fact, a mere letting of the premises. After trial judgment was entered for the plaintiff and the defendant has appealed to this Court.

Counsel for the appellant contended that the plaintiff did not in fact have a business at the time P1 was executed. He pointed to the provisions of clause 7 of P1 which required the defendant to pay a sum of Rs. 50 per mensem to liquidate a debt due from the defendant and his brother who ran the business immediately before P1 was executed. He also pointed to the fact that the defendant was not permitted to use the name "Somadisi Bakery". The document P1 shows that the premises was a well equipped bakery for baking bread and was licensed by the Local Authority as a bakery. The defendant admitted that he ran a bakery in these premises and that all he had to do was to purchase the flour for baking bread and also engage labour to bake the bread. He had also to replace bread pans as and when they perished. The document by its very terms required him to maintain the premises and run it as a bakery. He had to observe all the regulations of the Municipality in regard to bakeries and to obtain the annual licence required for the bakery. He had to do the necessary repairs and colour washing so as to conform to the by-laws of the Municipality pertaining to bakeries. At the termination of the period of 2 years he was obliged to hand over the premises as a bakery with all utensils and furniture. It was therefore obligatory on him to maintain the bakery and

the bakery business. He could not, therefore, have used the premises otherwise than a bakery. In deciding the question as to whether a document such as this is a lease of a business or merely a letting of premises one has first to look at the totality of its provisions and the object it seeks to achieve. *Vide Charles Appuhamy v. Abeysekera*, 56 N.L.R. 243 and *Jaya-singhe v. Hussein*, 56 N.L.R. 381. Secondly, whether the facts established in evidence show that in fact it has achieved something different and whether the document was only a cover for it. *Andiris Appuhamy v. Kuruppu*, 65 N.L.R. 21. The evidence led in this case shows that what was let was a bakery business, which business the defendant ran during the period of two years and was still running at the time of the trial. I therefore reject the contention that P1 was merely a letting of premises.

Counsel for the appellant next contended that this action could not be maintained by the plaintiff because the business name had not been registered as required by the provisions of section 2 of the Business Names Ordinance (Cap. 149) and therefore the agreement P1 was not enforceable by action (*Vide* section 9 of the Ordinance). Section 2(b) reads as follows:—

“(b) every individual having a place of business in Ceylon and carrying on business under a business name which does not consist of his true full names without any addition shall be registered in the manner directed by this Ordinance”.

Does the business which the plaintiff seeks to recover on P1 have a business name? During the lifetime of the plaintiff's husband the business carried the name “Somadisi Bakery”. This name did not go with the business that was leased on P1. Clause 6 of P1 expressly forbids the defendant to use this name. In the result what was let was a business owned by the plaintiff without a business name as defined by the Ordinance. It is that business which the plaintiff is seeking to recover. The provisions of section 9 are therefore not applicable to this case and the action is maintainable. For the above reasons the appeal is dismissed with costs.

SHARVANANDA, J.—I agree.

RATWATTE, J.—I agree.

*Appeal dismissed.*