

SUBRAMANIAM
v.
PATHMANATHAN

SUPREME COURT

SAMARAKOON, Q.C., C.J., COLIN-THOME, J. AND ABDUL CADER, J.
S.C. APPEAL No. 41/83 – C.A. No. 649/76(F)–D.C. COLOMBO B/393/L
MARCH 14, 1984

Landlord and tenant – Landlord transferring ownership of tenanted premises – Attornment to new owner – Failure to pay rent to new owner – Notice – Termination of tenancy by repudiation.

The appellant was the tenant of certain premises under one R. who was the owner. R. by deed No. 17 of 1.4.1971 transferred the premises to his wife the respondent who called upon the appellant to attorn to her from 1.1.1972. After some earlier correspondence, the appellant on 13.3.1974 wrote P 5 to the respondent's attorney-at-law requesting confirmation of R's signature on a letter calling upon him (the appellant) to attorn to the respondent and of the fact that the premises had not vested in the Commissioner of National Housing. By his letter (P 6) of 17.9.1974 the respondent's attorney-at-law gave the required confirmation. The appellant however did not pay any rents to the respondent. On 20.12.74 the respondent filed action in the District Court of Colombo seeking the ejection of the appellant and damages. The respondent filed answer bringing in to the credit of the case the rent from 1.1.1972 to 31.10.1975. Though the pleadings in the case lacked clarity the Court of Appeal held this was a tenancy action. Title had been pleaded to show that the respondent was the new owner and repudiation of the contract of tenancy had been pleaded to show that such a tenant is not entitled to notice to quit nor to claim any rights to a tenancy.

Held—

- (1) The appellant's failure to pay the rents even after he received confirmation by P 6 that it was R who had signed the letter requesting attornment to the respondent and that the premises had not vested in the Commissioner of National Housing, was a repudiation of his tenancy and such a person is not entitled to notice. Pleading a termination in the plaint therefore did not arise.
- (2) The Rent Act required three months' notice to be given. Although there was no pleading or issue on the point, the notice P 7 was received in evidence without objection. Therefore there was compliance with the requirement of the Rent Act and the respondent was entitled to maintain the action.

Cases referred to

- (1) *Edirisinghe v. Patel*, (1979) 79 (1) N.L.R. 217, 219.
- (2) *David Silva v. Madanayake*, (1967) 69 N.L.R. 396
- (3) *Hassan v. Nagaria*, (1969) 75 N.L.R. 335, 336.

APPEAL from a judgment of the Court of Appeal.

I. G. N. de J. Seneviratne with *S. Parathalingam* for defendant-appellant.

H. L. de Silva S. A., with *W. D. D. Weerasinghe* for plaintiff-respondent.

Cur. adv. vult.

April 5, 1984

SAMARAKOON, C.J.

This is an appeal with the leave of the Court of Appeal for decision by this Court on two issues raised by that Court. The appellant was the tenant of premises he occupied under one M. Muthiapillai since the year 1969. Muthiapillai died and his son M. Radhakrishnan became the owner of the premises and the appellant attorned to him and paid rents to him till the end of December, 1971. By Deed No. 17 dated 1.4.1971 Radhakrishnan transferred the premises to his wife, the respondent in this appeal. By letter dated 24.1.72 (P 1) the respondent, acting by her attorney-at-law, requested the appellant to pay her all rents from 1.1.1972. By letter dated 1.2.1972 (P 2) the appellant, acting by his attorney-at-law, requested the respondent's attorney to forward to him a letter from "the previous landlord Mr. Radhakrishnan" authorising the appellant to make payments to the respondent. He also asked the particulars of the Deed of Transfer. A letter dated 1st November, 1973 (P 4) signed by Radhakrishnan was forwarded to the appellant. This letter requested the appellant to make

payments to the respondent. The appellant appears to have doubted the genuineness of the signature of Radhakrishnan on P 4 and he therefore wrote through his attorney a letter dated 13.3.1974 (P 5) to the respondent's attorney asking him to confirm that it was in fact signed by Radhakrishnan. He also sought information as to whether the premises had vested in the Commissioner of National Housing. The attorney added—

" On your confirmation that the said letter is genuine my client shall pay to your client all arrears of rent. "

By letter dated 17.9.1974 (P 6) the respondent's attorney replied to the attorney of the appellant providing the necessary confirmation and stated that the premises had not vested in the Commissioner of National Housing. No rents were however forthcoming. On 20.12.74 the respondent instituted action in the District Court of Colombo praying for—

- (a) a declaration that the appellant was in wrongful and unlawful occupation of the premises ;
- (b) for a decree in ejectment ; and
- (c) for damages at Rs. 50 per month from date of action until ejectment.

On 26.5.75 the appellant tendered to the respondent a cheque for Rs. 960/72 being rents due from 1.1.1972 to 31.12.73 less a sum of Rs. 331/87 being rates paid to the Colombo Municipal Council. This cheque was returned to the appellant by the respondent. The appellant filed answer on 29.10.1975 denying the averments in the plaint and pleading the facts set out above. He also pleaded—

- (a) that no rents were paid for the period subsequent to 1.1.74 " as the plaintiff had not furnished proof that the said land and premises had not vested in the Commissioner of National Housing
- (b) that he was not wrongfully in arrears of rents and the failure to pay rents was due to the default of the plaintiff (respondent) in not providing the documents asked for by him ; and
- (c) that the action cannot be maintained as the tenancy had not been duly terminated.

With his answer he brought into Court to the credit of the case a sum of Rs. 1171/95 on account of rent from 1.1.1972 to 31.10.1975.

After trial the District Judge entered judgment in favour of the respondent. The appellant's appeal to the Court of Appeal did not succeed. Both Courts were of the view that the action as constituted on the plaint read with the admissions on record and the issues framed was not one of *rei vindicatio* based on title but a tenancy action based on a breach of contract. The first question for decision is stated by the Court of Appeal as follows :-

" Could the plaintiff respondent have maintained an action in respect of premises governed by the Rent Act of 1972 without pleading termination of tenancy ? "

It appears to me that the manner in which the plaint has been drafted has been the cause of some confusion and the source of needless argument. It recites the ownership by reference to the Deed of Transfer. No devolution of title has been pleaded. It recites the fact that the appellant declined to pay rents to the respondent and that the appellant by his conduct repudiated the contract of tenancy between himself and the respondent and therefore was not entitled to any relief under the Rent Act, No. 7 of 1972. What this latter pleading seeks to convey is hard to comprehend. The sum and substance of it is that the appellant declined to pay rent to the new owner. The plaint goes on to place a value " on the subject matter of the action ". Perhaps he values the premises at this figure - which again is hard to accept. It then prays for damages from date of action. Nowhere does it claim arrears of rent or damages equivalent to the monthly rent. It does not pray for a declaration of title but asks for a decree in ejectment. It has been numbered as a land action. The answer has done no better. It does not even plead the benefit of the Rent Act. It only pleads the absence of a termination of tenancy which could mean one under the Common Law or one under the Statute Law.

On the first date of trial the dispute took a different course. Counsel for respondent raised three issues. They are-

- " (1) Has the defendant paid any rent to the plaintiff after she became the owner of the premises ?
- (2) If not, is the defendant in wrongful occupation of the premises ?
- (3) If issues 1 and 2 are answered in the affirmative, is the plaintiff entitled to the relief prayed for in the plaint ? "

There was no necessity for these issues for the reason that the facts were admitted of record. It is recorded at the outset that the respondent admits that the appellant is the lawful owner of the premises in suit (this fact was denied in the answer). Further that the appellant had been requested by the respondent in writing to pay rents. This must be read with the admission in the answer that no rents were paid to the respondent in response to those requests. It is also recorded that by consent of parties damages were fixed at Rs. 50 per mensem. The entire case of the respondent was therefore conceded and the burden was on the appellant to prove that he had a right to continue in occupation. His counsel then raised the crucial issue as follows :-

"(4) Is the defendant in occupation of the premises as the lawful tenant of the plaintiff ?"

A tenancy has been referred to in para 5 of the plaint in a quizzical manner. For good measure his counsel raised on the next date of trial the following issues based on para 5 of the plaint--

"(5) As pleaded in paragraph 5 of the plaint has the defendant repudiated the contract of tenancy between himself and the plaintiff ?

(6) If not, can the plaintiff have and maintain this action ?"

If the appellant succeeded in proving that he was the lawful tenant then other questions arose due to the fact that an admission was entered of record that the premises were governed by the provisions of the Rent Act, No. 7 of 1972. No further pleadings were filed but the respondent was permitted to mark in evidence notice to quit dated 13th November, 1973, (P7) which gave the appellant three months notice to vacate the premises.

The Court of Appeal has held that this was an action on a tenancy and I am of opinion that it was correct in so holding. Title has been pleaded to show that the respondent was the new owner and therefore by operation of law she stepped into the shoes of the seller who was the landlord and that therefore she was entitled to the rents. Repudiation of the contract of tenancy is pleaded because of the decisions of the Supreme Court that such a tenant is neither entitled to notice to quit nor to claim any rights to a tenancy. Vide the cases cited in *Edirisinghe v. Patel* (1). The appellant did not deny the tenancy. He only wanted confirmation of a kind which was provided on 17.9.1974

by P6. He was silent thereafter and did not pay any rent. In his answer filed on 29.10.1975 he pleaded that rents were not paid firstly because the respondent failed to furnish proof that the premises were not vested in the Commissioner of National Housing and secondly because the respondent failed to provide the documents asked for by him. Neither reason is true to fact and therefore both are unacceptable. Having elected to remain in occupation he was bound to pay rent to the respondent. In this case he did not fulfil his undertaking to pay even though he received the confirmation he asked for by his letter P5. The respondent was, in these circumstances, entitled to sue the appellant in ejectment. *David Silva v. Madanayake* (2). As stated earlier a termination of tenancy has been pleaded in para 5 of the plaint by a plea that the appellant himself repudiated the tenancy. This is a termination by him. The appellant did not expressly admit the tenancy. He held the respondent at bay for a long time without either an admission or denial of the tenancy. In his answer filed in Court he gave two reasons for not paying rent which were patently false. Such a person is not entitled to a notice to quit. *Hassan v. Nagaria* (3). Pleading a termination in the plaint therefore does not arise.

Issue (b) reads as follows :—

“(b) Is it competent for a Court to enter judgment against the appellant on the ground of termination of a tenancy within the Rent Act where no issue in relation to the question of termination of tenancy has been taken up at any stage.”

The Rent Act required a period of three months notice to be given. It was neither pleaded nor raised in issue. But such notice was given by P7 which document was marked in evidence without objection. There was therefore proof of compliance with the requirement of the Rent Act and the respondent was therefore entitled to maintain the action. Pleadings have been defective and no issue therefore could be raised. But these were corrected during the trial. In the result there was proof that the tenancy had been lawfully terminated and that the action could be maintained under the provisions of section 22 (3) (a) of the Rent Act. An order of ejectment was therefore correctly made.

In view of the above I dismiss the appeal with costs here and in the Court of Appeal.

COLIN THOME, J.—I agree.

ABDUL CADER, J.—I agree.

Appeal dismissed.