

D.M.J. DE SILVA
v.
MALLIKA PERERA

SUPREME COURT
BANDARANAYAKE, J., KULATUNGA, J. AND
RAMANATHAN, J.
S.C. APPEAL No.64/87
S.C. SPECIAL LEAVE TO APPEAL No. 88/87
C.A. 636/79(F)
D.C. PANADURA 15431/RE
OCTOBER 30, 1989.

Landlord and tenant – Arrears of rent – Rent deposited by tenant's daughter at U.C. – Was it rent paid by tenant and was it payment to the landlord? – Rent Act, No. 7 of 1972, section 21.

The tenant's daughter had deposited the rent at the U.C. in favour of the landlord and the Special Commissioner had invited the landlord to collect the money in deposit.

The contentions were –

- (a) the rent was not paid by the tenant as required by section 21 and
- (b) there was no payment in favour of the landlord

It was admitted that the defendant had deposited rent in the name of the deceased landlord even after his death. The landlord's son admitted that the defendant was depositing the rent at the Urban Council and the landlord's son requested the rent be paid to him. The tenant wrote to the Chairman U.C. Moratuwa that rent of the premises would be paid by his daughter.

Held –

1. The deposit of the rent at the U.C. was on behalf of the tenant by his daughter who was not claiming the tenancy for herself. Such payment falls within section 21(1) of the Rent Act.
2. The rents had in fact been paid in the name of the landlord. This continued even after the landlord's death. The landlord had left a last will in respect of which probate had not yet been issued. The landlord's heirs were his son the plaintiff and two daughters. Hence a prudent tenant would have recourse to section 21 of the Rent Act.
3. The payment of rent to the U.C. being in accordance with section 21(1) of the Rent Act, such payment is under section 21(2) "deemed to be a payment received on that day by the landlord of the premises from the tenant thereof." Hence the payment must be deemed to be to the landlord. Section 21 should not be construed in an unduly narrow and technical manner.
4. To be entitled to the benefit of section 21 all that has to be established is that payment was made to the Urban Council.

Case referred to:

1. *Husseniya v. Jayawardena* and another [1981] 1 Sri LR 93.

APPEAL from judgment of the Court of Appeal.

P.A.D. Samarasekera, P.C. with *J.A. de Gooneratne* for plaintiff – respondent

A.C. Gooneratne, Q.C. for the substituted defendant – appellant – respondent

Cur. adv. vult.

December 04, 1989.

RAMANATHAN, J.

The plaintiff as landlord instituted this action to eject the defendant who was the tenant from the premises for arrears of rent. The plaintiff's case was that the defendant was in arrears of rent from November 1972 for a period of over three months. The defendant in his answer pleaded that he deposited the rent at the Urban Council and denied that he was in arrears of rent. The District Judge entered judgment for the plaintiff and ordered ejectment of the defendant.

It was common ground that the defendant was originally the tenant under the plaintiff's father D.H.L. de Silva who died in December, 1972. At the hearing before us Mr. Samarasekera, President's Counsel for the plaintiff-appellant reiterated the submission which he

had made in the Court of Appeal that although rents in respect of the premises in suit were regularly deposited at the Urban Council Moratuwa being an "authorised person" under Section 21 of the Rent Act No.7 of 1972, such payment was not sufficient to discharge the liability of the defendant-respondent for the reason –

- (a) that the rent was not paid by the tenant as required by Section 21; and
- (b) that there was no payment in favour of the plaintiff-appellant as landlord.

As regards the first point it was urged by Mr. Samarasekera that the receipts and other documents prove that it was not the tenant but his daughter Mallika Perera who had paid rent; and that such payment cannot be regarded as having been made on behalf of her father, the tenant. Counsel relied on P4 a letter dated 17.01.75 sent by the Urban Council informing him that rents have been paid by Mallika Perera. Furthermore, P5 was a letter dated 27.04.76 sent by the Special Commissioner to the plaintiff-appellant indicating that Mallika Perera was the tenant of the premises. It was contended by counsel that P4 and P5 and receipts D3 to D21 show that the defendant was making an attempt to create a tenancy in Mallika Perera.

The Court of Appeal rejected this submission after considering the relevant evidence consisting of –

- (a) an admission recorded at the commencement of the trial to the effect that the defendant has deposited rent in the name of the deceased D.H.L. de Silva even after December, 1972;
- (b) the plaintiff's evidence under cross-examination that the defendant was depositing the rent at the Urban Council, and that he requested to pay the rent to him;
- (c) the letter dated 20.06.73 addressed to the Chairman, Urban Council Moratuwa by the defendant (D2) stating that thereafter the rent in respect of these premises would be paid by his daughter Mallika Perera.

The Court of Appeal held that on the facts, it was fair and reasonable to hold that the deposit of rent by Mallika Perera was on behalf of her father, the admitted tenant of the premises and such payment falls within Section 21(1) of the Rent Act. In reaching this conclusion, the Court distinguished the decision in *Husseniya vs.*

Jayawardena & Another (1). That was a case in which the rent was deposited by a sub-tenant who claimed to be a tenant; in the instant case Mallika Perera who deposited the rents did not claim to be a tenant or any other right to occupy the premises in suit. I am in agreement with this finding.

The other point urged on behalf of the appellant namely, that the payment of rent was not made in favour of the plaintiff who was the landlord was also rejected by the Court of Appeal. The court said that it is quite true, as stressed by Mr. Samarasekera that the rents had in fact been deposited in the name of the deceased father of the plaintiff but observed that it was relevant to note that the rents had been so deposited at the Urban Council even prior to the death of the plaintiff's father and that this practice continued even after his death; that the last will (P8) was not proved and the intestate heirs of the deceased included not only the plaintiff but his two sisters as well; that in view of these special circumstances it would not have been unreasonable for a prudent tenant to have had recourse to Section 21 of the Rent Act even though the uncontradicted evidence of the plaintiff was that the defendant had earlier agreed to pay rent to him; that in any event the plaintiff had not been actually denied the benefit of the monies deposited at the Urban Council as evidenced by P5 which is a letter dated 27.04.76 written by the Special Commissioner of the Urban Council requesting the plaintiff to call over at the office and receive the rent. Appellant's counsel submitted that in terms of Section 21(3)(c) of the Rent Act such payment is not valid as the arrears had not been tendered to the landlord before the summons returnable date.

However, in the opinion of the Court of Appeal the decisive point is that once it is established that the payment of rent has been in accordance with Section 21(1) of the Rent Act, then Section 21(2) provides that such payment "shall be deemed to be a payment received on that day by the landlord of the premises from the tenant thereof". The court therefore held that the payments of rent made to the Urban Council attracted the benefit of Section 21 of the Rent Act; and that this Section should not be construed in an unduly narrow and technical manner. I am in agreement with this finding.

Mr. A.C. Gooneratne, for the defendant-respondent stressed that to be entitled to the benefit of Section 21 all that has to be established is that payment was made to the Urban Council. If this is done, then

such payment is deemed to be a payment received by the landlord on that day; the forms used for payment of rent are not prescribed by law and that the particulars entered in the forms as to the person making the payment and the pro forma payment in favour of the deceased father of the tenant would not, in the circumstances of this case, affect the validity of the payment under Section 21 of the Rent Act. I am in agreement with this submission.

For the above reasons, I affirm the judgment of the Court of Appeal and dismiss the appeal. The plaintiff-appellant is directed to pay Rs.735/- as costs of this appeal.

BANDARANAYAKE, J. – I agree.

KULATUNGA, J. – I agree.

Appeal dismissed.
