JAYASINGHE
v.
SOMARATNE

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
RAMANATHAN, J. AND
DR. SHIRANI BANDARANAYAKE, J.
S.C. APPEAL NO.13/96
C.A. NO. 740/92
D. C. KALUTARA NO. 363/RE
JANUARY 27, 1997.

Landlord and Tenant – Ejectment of tenant on the ground of reasonable requirement – Rent Act – Section 22(1)(b) of the Act.

The plaintiff sought to eject the defendant his tenant from the premises in suit under section 22(1)(b) of the Rent Act on the ground that the premises were reasonably required for occupation as a residence for the plaintiff and the members of her family. The District Judge entered judgment for the plaintiff-respondent.

Held:

1. The reasonableness of the Landlord's demand to be restored to possession must be proved to exist at the date of the institution of the action and to continue to exist at the time of the trial.

2. In reversing the findings of the District Court in favour of the plaintiff, the Court of Appeal misdirected itself on the primary facts, a misdirection which resulted in a miscarriage of justice.

APPEAL from the judgment of the Court of Appeal.

S. Ediriweera for appellant.

Ranjan Gunaratne for respondent.

Cur. adv. vult.

February 13, 1997.
G. P. S. DE SILVA, C. J.

This is a tenancy action. The plaintiff instituted these proceedings on 11.12.89 seeking to eject the defendant, his tenant, from the premises in suit. The ground of ejectment relied on was section 22(1)(b) of the Rent Act. At the trial, the crucial issue was whether the premises were reasonably required for occupation as a residence for

the plaintiff and the members of his family. Upon a careful consideration of the evidence placed before the Court, the District Judge entered judgment for the plaintiff.

The defendant appealed to the Court of Appeal; the findings of the District Court were reversed and the plaintiff's action was dismissed. Hence the present appeal by the plaintiff to this Court.

The analysis, of the evidence of the plaintiff by the Court of Appeal is in the following terms. "In evidence the plaintiff stated that he required the house in question for his residence as his son had to attend tuition classes and his wife had to attend classes at the Nurses Training School. However, in cross examination he stated that in 1989, that is on the date of the institution of the action he had taken steps to sell this house in order to purchase another house. He has stated that on the date on which he was giving evidence, the value of one perch of land in the area in which the house is situated was Rs. 12,000/- so that it clearly shows that he wanted to sell this house and in re-examination he has confirmed this by stating that his requirement was to sell this house to purchase another house."

The evidence the plaintiff gave on this point in cross examination and in re-examination reads thus:

(89.12.19 දින දරණ ලිපිය පෙන්වයි)

ප්‍ර: මෙහි තමාගේ අත්සන තිබෙනවාද?
උ: ඔව් (89.12.19 දරණ ලිපිය පෙන්වයි.)
ප්‍ර: මෙහි තමා ගේ අත්සන තිබෙනවාද?
උ: ඔව්
(87.12.23) ලිපිය සාක්ෂිකරුට පෙන්වයි.)
ප්‍ර: මෙහි තමා ගේ අත්සන තිබෙනවා ද?
උ: ඔව්. (එම ලිපිය කියවයි.)
ප්‍ර: 1989 දී මෙම ගෙය සහ වත්ත විකුණා මුදල් ගන්න සූදානම් වුනාද?
උ: අංග සම්පූර්ණ වෙනත් නිවසක් ගැනීම සඳහා මට අවශ්‍ය වී තිබුනා.
අද තක්සේරුව මේ ප්‍රදේශයේ පර්චස් එකක් රු. 12,000/-යි.
(82.12.8 දින දරණ ලිපියක් පෙන්වයි) එහි තිබෙන අත්සන මගේ.
එම ලිපිය වි 3. වශයෙන් ඉදිරිපත් කරයි.
ප්‍ර: එක් ලක්ෂ විසිපන් දහසකට තමා ඒ අවස්ථාවේ දී දේපල විකිණීමට කැමති වුනා?
උ: ඔව්

ප්‍ර: තමා මෙම දේපල අරගෙන වැඩිමිලට විකිණීමට අවශ්‍ය වී තිබුනා?

උ: මට වෙනත් නිවසක් ගැනීමට අවශ්‍ය වී තිබුනා.

ප්‍ර: ....

ප්‍ර: මෙම ගෙය වැඩි මිලකට විකුණා ගැනීමේ පරමාර්තයෙන් නඩු දමා ඇත.?

උ: පිළිනොගනිමි.

නැවත විමසීම :-

මට අවශ්‍යතාවය තිබුනේ මේ නිවස විකුණා වෙනත් ස්ථානයක් මිලයට ගැනීමට මාගේ පදිංචිය සඳහා.

I have examined the record and I find that no document dated 19.12.89 has been marked in evidence on behalf of the defendant. The letters produced in evidence are වි 1 (dated 17.12.81) වි 2 (dated 23.12.87) and වි 3 (dated 8.12.81). Clearly no document of 1989 has been produced by the defendant. It is thus manifest that the reference to the year 1989 in the proceedings is a typographical error. It is also very relevant to note that in the last question in cross-examination the plaintiff denied the suggestion made to him that this action was filed with the intention of selling the house for an enhanced price.

What is more, on a reading of the judgment of the District Court it is clear that the evidence of the plaintiff was that it was in 1987 that he had the intention of selling the house. This is what the District Judge says on this vital aspect of the evidence.

"එක්තරා කාලයකදී පැමිනිලිකරු මෙම නිවස විකිනීමට අදහස් කරගෙන සිටි බව විත්තිකරු කියා සිටින ලදී එනම්.

එනම්. 1987 දී පමණ. නමුත් පැමිණිලිකරු 1987 දී මෙම නිවස විකිනීමට අදහස් ඝරගෙන සිටියා වුවද. පසුව. ඔහුගේ පදිංචියට මෙම නිවස අවශ්‍ය වීමට ඉඩ ඇත. මෙම නඩුව පවරා තිබෙන්නේ 1989.12.11 වන දිනය. එබැවින් ඔහුට මෙම නිවසේ අවශ්‍යතාවය තිබිය යුත්තේ මෙම නඩුව පවරන අවස්ථාවේදී විය යුතුය. ඊට අවුරුදු ගාණකට කලින් ඔහුට මෙම නිවස විකිනීමට අදහසක් තිබුනා වුවද, අධිකරණය සැලකිය යුත්තේ නඩු පවරනු අවස්ථාවේ ඔහුට හෝ ඔහුගේ පවුලේ සාමාජිකයින්ට මෙම නිවසේ යුක්ති සහගත අවශ්‍යතාවය තිබුනාද යන්නය. මේ සම්බන්ධයෙන් මම ශ්‍රේෂ්ඨාධිකරණ නඩු තීන්දුවක් වන 51 නව නීති වාර්තාවේ 213 පිටුවේ "ඇන්ඩ්‍රි" එරෙහිව "ඩී. ෆොන්සේකා" නමැති ශ්‍රේෂ්ඨාධිකරණ නඩුවේ තීන්දුවේ 214 වන පිටුවේ, ශ්‍රේෂ්ඨ විනිශ්චයකාර තුමා විසින් කියා ඇති මෙම කරුණු කෙරේ අවධානය යොමු කරවමි."

"The reasonableness of the landlord's demand to be restored to possession for the purposes of his business must be proved to exist

at the date of institution of the action and to continue to exist at the time of the trial."

On a consideration of the oral evidence of the plaintiff the documents marked in evidence and the findings of the District Court it seems to me that the Court of Appeal has misdirected itself on the primary facts, a misdirection which has resulted in a miscarriage of justice.

For these reasons I allow the appeal, set aside the judgment of the Court of Appeal, and restore the judgment of the District Court. The plaintiff is entitled to a sum of Rs. 525/- as costs of appeal.

RAMANATHAN, J. – I agree.

DR. SHIRANI BANDARANAYAKE, J. – I agree.

Appeal allowed.