

WEERAKOON

v.

SIRAYADI

COURT OF APPEAL
WIGNESWARAN, J.
TILAKAWARDENA, J.
C.A. 342/95(F)
D.C. MT. LAVANIA 3055/RE
DECEMBER 17, 1999

Rent Act 7 of 1972 - S. 22(2)(bb)(ii) - S.22(7) Ownership acquired by way of gift - Subsequent to specified date - Inheritance or gift from a parent of spouse - Who is 'parent' - Is grandmother a parent - Constitution - 16th Amendment Article 23, Art 23(1), Art 23(3), Art 23(4) - Sinhala version different from English version which prevails ? 1972 Constitution.

The Plaintiff Appellant instituted action seeking an order for the ejection of the Defendant Respondent from the premises in question.

The premises were gifted to the Plaintiff Appellant by her grandmother. Prior to the gift the Plaintiffs grandmother had given the premises on rent to the Defendant Respondent.

It was contended that the ownership of the premises had been acquired by way of gift subsequent to the date specified, in the Rent Act but that the said gift was 'an inheritance or gift from a parent or spouse who had acquired ownership of such premises on a date prior to the specified date. The District Court dismissed the action stating that the Plaintiff Appellant cannot have and maintain this action in view of S.22(7), inasmuch as the property was a gift from the grandmother. It was further held that the Sinhala version of the Act refers only to an inheritance received from a "Father or a Mother" unlike the English version of the Act which refers to a "Parent" so as to include a forefather.

Held :

- (i) The Rent Act was enacted prior to the promulgation of the 1972 Constitution, hence the language in which the Rent Act was enacted was the English language.
- (ii) District Judge has failed to consider the 16th Amendment to the Constitution. This constitutional amendment repealed the earlier provisions relating to the language of legislation, there is nothing to justify that the Sinhala version gains precedence.

- (iii) The District Judge has erred in giving preference to the Sinhala translation of the Rent Act - he had failed to consider the provisions of the bar contained in S.22(7) which referred to transfer from a 'parent' which could include a "grandmother."
- (iv) Rent Act has to be interpreted to include direct gifts from the ancestors such as a grandmother.
- (v) Since the Plaintiff acquired the ownership as a gift from her grandmother, the bar against acquisition of ownership over the head of a tenant would in the circumstances not operate.

APPEAL from the Judgment of the District Court of Mt. Lavanaia.

Cases referred to :

1. *Ross v. Ross* - 20 NL Bear 645

N. R. M. Daluwatte, with *D. P. Abeystrwardena* for Plaintiff Appellant.
Defendant Respondent absent and unrepresented.

Cur. adv. vult.

February 29, 2000.

SHIRANEE TILAKAWARDANE, J.

The Plaintiff instituted action in the District Court of Mt. Lavinia for an Order for the ejectment of the Defendant from the premises bearing assessment No: 195, Avissawella Road, Maharagama, and for damages.

The question for determination as a preliminary issue was whether the Plaintiff could have and maintain the said action under Section 22(2)(bb)(ii) of the Rent Act 7 of 1972 because of the bar contained in Section 22(7) of the said Rent Act.

It was common ground that the Plaintiff had become owner of the premises in dispute by deed of gift bearing No: 23481 of 22. 05. 1976 made by her grandmother. Prior to the gift the Plaintiff's grandmother had given the premises in suit on rent to the Defendant.

The Plaintiff contended that the ownership of the premises had been acquired by way of gift subsequent to the date specified in the Rent Act but that the said gift was "an inheritance or gift from a parent or spouse who had acquired ownership of such premises on a date prior to the specified date".

The District Judge by his order dated 31. 07. 95 held that the Plaintiff cannot have and maintain the action in view of the provisions contained in Section 22(7) of the Rent Act inasmuch as the property was a gift from the grandmother. The District Judge held that the Sinhala version of the Act refers only to an inheritance received from a "father or a mother" unlike the English version of the Act which refers to a "Parent" so as to include a forefather. He has adverted to the provisions of Article 23(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka and has held that the Sinhala version should have precedence in interpreting the provisions concerned.

However, it appears that the District Judge has failed to consider the 16th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka, which was operative from the 17th of December 1988. This Constitutional Amendment repealed the earlier provision relating to the language of Legislation. Article 23(4) had replaced Article 23(3) of the Constitution. Consequently, there is nothing to justify that the Sinhala version gains precedence as the District Judge has held.

The provision contained in Article 23(3) prior to the amendment reads as follows:-

"The laws published in Sinhala under the provisions of paragraph (2) of this Article, shall, as from the date of such publication, be deemed to be the law and supersede the corresponding law in English."

In the amendment, in cases, of inconsistency between the several languages of the Act, no 'supersedence' is given to any specific translation.

However the proviso to Article 23(1) refers to situations where inconsistencies are apparent, and how it should be dealt with. This Article reads as:-

"Provided further that in respect of all other written laws the text in which such written Laws were enacted or adopted or made, shall prevail in the event of any inconsistency between such texts."

The next matter therefore is to determine the language in which the Rent Act 7 of 1972 was 'enacted or adopted or made'.

The Rent Act No 7 of 1972 was published in the Gazette on the 1st of March 1972. This was prior to the promulgation of the 1972 Constitution and hence the Language in which the Rent Act was made or enacted was the English Language.

Therefore in the present context as stipulated in Article 23 of the Amendment to the Constitution referred to above, the language of the legislation to be preferred in case of an inconsistency in language would be the words adverted to in the English version of the enactment.

The District Judge has erred in giving preference to the Sinhala Translation of the Rent Act. He failed to consider the provisions of the bar contained in Section 22(7), which referred to transfer from a "parent" which could include a "grandmother".

Where the ownership of the premises in suit passed in terms of Deed No: 23481 from the grandmother of the Plaintiff, the District Judge should have considered whether such gift could in Law be interpreted as a gift from a "parent".

"Ayer's Judicial Dictionary defines "parent" to include the maternal grandfather. The Interpretation given in the Oxford Dictionary includes an ancestor or forefather. In the case of *Ross v. Ross*⁽¹⁾, which dealt with the construction of a will the word "parent" was interpreted to include a "grandfather". Section 22(7) of the Rent Act therefore has to be interpreted to include

direct gifts from the ancestors such as a grandmother. On the facts of this case since the Plaintiff acquired the ownership as a gift from her grandmother, the bar against acquisition of ownership over the head of a tenant would in the circumstances not operate.

Accordingly, I set aside the Order of the District Judge dated 31. 07. 1995, and answer Issue 8 as "yes," and direct the District Judge to permit the Plaintiff to proceed with the action. I remit the case back for trial on the other issues. The District Judge is to conclude this case as expeditiously as possible.

The Appeal is accordingly allowed with taxed costs payable by the Substituted Defendant Respondent to the Plaintiff Appellant.

WIGNESWARAN, J. - I agree.

Appeal allowed.