

1964

*Present : Sri Skanda Rajah, J., and Sirimane, J.**S. M. ISMAIL, Petitioner, and S. RAMALINGAM, Respondent**S. C. 65/64—Application for Conditional Leave to Appeal to the Privy Council in S. C. 45 of 1963/C. R. Colombo 82852**Privy Council—Conditional leave to appeal—Rent controlled premises—Judgment for ejectment against tenant—Valuation of subject matter in dispute—Appeals (Privy Council) Ordinance (Cap. 100), Schedule, Rule 1 (a).*

Where a tenant of rent controlled premises seeks to appeal to the Privy Council as of right from a judgment for ejectment entered against him, the value of the subject matter in dispute is the value of the right of occupancy and not the value of the premises.

Kaliappa Pillai v. Cassim (63 N. L. R. 199) not followed.

Obiter: Where the landlord is the appellant, the determining factor is the value of the premises.

APPPLICATION for conditional leave to appeal to the Privy Council.

M. Tiruchelvan, Q.C., with *M. T. M. Sivardeen* and *J. Peri Sunderam*, for the Defendant-Petitioner.

C. Ranganathan, with *S. Sharvananda*, for the Plaintiff-Respondent.

Cur. adv. vult.

October 15, 1964. SRI SKANDA RAJAH, J.—

This is an application by an unsuccessful tenant for conditional leave to appeal to Her Majesty in Council.

He was sued in the Court of Requests by the landlord, after the tenancy was terminated by a calendar month's notice. The monthly rent of these residential premises, which are subject to the Rent Restriction Act of 1948, is Rs. 97.75. The ground on which the action was brought was that the premises are reasonably required by the landlord for his residence. Judgment was entered for the landlord. The tenant's appeal to this Court proved unsuccessful. Hence this application on the basis that an appeal lies as of right in terms of Rule I (a) of the Rules in the Schedule to the Appeals (Privy Council) Ordinance, Cap. 100. In his affidavit he avers that the matter in dispute in the appeal, which he calls the right of occupation, amounts to or is of the value of Rs. 5,000 or upwards. The plaintiff-respondent has, in his counter affidavit, denied it. Thereafter the petitioner filed a further affidavit with a Valuation Report which gives the value of the premises in suit. It does not purport to assess the alleged right of occupation.

Learned Counsel for the petitioner cited in support *Kaliappa Pillai v. Cassim*¹, the Privy Council decisions *Lipshitz v. Valero*² and *Meghzi Lakhamski and Brothers v. Furniture Shop*³ cited therein, and *Salim v. Hashim : S. C. Application No. 5 of 1961. C. R. Colombo 76282, S. C. Minutes of 26.10.62*

In *Lipshitz v. Valero (supra)* the landlord claimed an order for possession of land which he had leased to the appellant on a monthly tenancy at a rent of £ 13.5 a month, and on which the appellant had erected a building at a cost of £ 450. The appellant pleaded, inter alia, that the action was contrary to the Rent Restriction Ordinance. The landlord being successful in the Supreme Court of Palestine, the appellant applied for and obtained leave to appeal to His Majesty in Council. The Supreme Court holding that the tenancy right amounted in value to at least £ 50, i.e. about four times the monthly rent—and not at 50 times as the petitioner before us seeks to do—and the value of the building to £ 450. The Privy Council held that the Supreme Court had applied the right test, viz.: whether it was worth £ 500 to the appellant that the Rent Restriction Ordinance should be held to give him protection against an order to vacate the land leaving on it a building which cost him £ 450 to erect. It is necessary to emphasize that if the building had been erected by the landlord the tenancy right would have been about £ 50 and the tenant would have had no right of appeal to His Majesty in Council. We would point out that the petitioner before us does not claim to have made any improvements on these premises.

¹ (1961) 63 N.L.R. 199.

² (1948) A.C. 1.

³ 1954 A.C. 80.

In *Meghzi Lakshmin case (supra)* the appeal was by the landlords. At 87 it was pointed out that, "the value of the subject matter in dispute must be determined by looking at the judgment as it affects the interests of the party who is prejudiced by it and who seeks the appeal", and at 88, "Looked at from the angle of the landlords, the value of the property, vacant possession of which they were claiming, was correctly taken as on a capital value basis. *It by no means necessarily follows that the result would have been the same if the tenants had been the appellants*"

In the 63 N. L. R. case (*supra*), after referring to these two cases, it was stated at 201, "We consider that in the state of the facts before us on the present application we should apply the decision in *Meghzi Lakshmin's case (supra)* that it is the value of the property, not the value of the claim in question, which is the determining factor." With respect, we find it difficult to reconcile this view with the observation quoted in the last paragraph, considering the fact that the appellant was not the landlord but the tenant. We would respectfully add that we find that our view is at variance with that in *Kaliappa Pillai's case (supra)* and *Salim's case (supra)*, which purported to follow the former.

In *S. C. Application 241/62 : S. C. Minutes of 16.11.1952*, the petitioner was the unsuccessful tenant of business premises, where he carried on business which had a daily turnover of over Rs. 25,000. It was, therefore, held that his right of occupancy was worth more than Rs. 5,000 and he was granted conditional leave to appeal.

In our view (1) where the tenant is the appellant the determining factor is not the value of the property but that of the right of occupancy, and (2) where the landlord is the appellant the determining factor is the value of the property.

In this case the petitioner has failed to establish that his right of occupancy is of the value of Rs. 5,000 or upwards.

The submission that the petitioner has a perpetual right of occupancy because, in the event of his death, his widow or child will be entitled to step into his shoes as tenant under section 18 of the Rent Restriction Act is not correct. Once the tenancy has been terminated by notice the statutory protection, which is of a purely personal nature, cannot be passed on to the widow or child : *Hensman v. Stephen*¹.

The above are the reasons for the order we made on 15.10.64 refusing leave.

SIRIMANE, J.—I agree.

Application refused.

¹ (1953) 55 N. L. R. 89.