WIJERATNE
v.
GUNASEKERE

COURT OF APPEAL.
WEERASEKERA, J.
WIGNESWARAN, J.
C.A. 450/92(F).
D.C. 2923/RE.
NOVEMBER 15, 16, 19, 29, 1996.

Rent Act, No. 7 of 1972 as amended by Act No. 55 of 1980 – Sections 31, 18(A) (2) b (1), 22(2) (bb) (ii) of the Act – Deposit of 5 years rent – Computation – Whether it is Agreed Rent or Authorised Rent .

Civil Procedure Code – Sections 772(1), 756(e) – Cross appeal – Applicability of section 22(7) of the Rent Act – Whether it acts as a bar to the maintenance of the action – Specified date.

Held:

The word 'Rent' is not defined in section 48, yet the word (Rent) has different connotations in the Rent Act – meaning sometimes agreed rental, sometimes authorised rent, sometimes proportionate rent etc.

If the intention of the legislature was that in section 22(2) (bb) (1) Rent should mean authorised rent the draftsman would most certainly have used such an adjective in front of the word "Rent" as in section 18(a) (2) (b) (ii). The conclusion is that the word "Rent" was used intentionally. That is in the case of those paying a monthly rental **at the date** of the Authorised Rent or **higher** than the Authorised Rent, the 5 years rent should be calculated by multiplying the Authorised Rent by 60, while in the case of those paying a monthly rental **less** than the Authorised Rent, it would be calculated by multiplying **such** monthly rental by 60.

(2) What is contemplated in section 22(7) with reference to the facts of the instant case, is if the landlord acquires ownership of the premises in suit on a date subsequent to the specified date by inheritance or gift from her parent who had himself acquired ownership of such premises on a date prior to the 'specified date' then the bar will not apply, otherwise by implication the bar would apply.

Generally any purchase or inheritance or gift subsequent to the specified date over the head of the tenant bars a landlord from filing action against his or her tenant. The exception is inheritance or gift from a parent or spouse who had

himself acquired ownership of the premises in suit on a date prior to the specified date. The specified date means the date on which the tenant for the time being of the premises or the tenant upon whose death the tenant for the time being succeeded to the tenancy (Defendant Respondent) came into occupation of the premises.

It is seen that the ownership of the premises was acquired by the plaintiff-appellant (landlord) on a date after 1943 (specified date). It was by a gift from a parent in 1965. To escape the bar set out in section 22(7) such parent of the landlord shall have acquired ownership of such premises on a date prior to 1943 (specified date), but the parent of the landlord acquired ownership much later in 1956. Therefore the bar would apply to the facts of this case.

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

A. K. Premadasa, P.C. with *C. E. de Silva* and *Mangali Wickremasena* for plaintiff-appellant.

P. A. D. Samarasekera, P.C. with *Yasa Jayasekera* for substituted defendant-respondent.

Cur. adv. vult.

March 20, 1996.

C. V. WIGNESWARAN, J.

The plaintiff filed this case to eject the defendant and all those holding under her, from premises No. 25, Upatissa Road, Colombo 04 in terms of section 22(2) (bb) (ii) of the Rent Act, No. 7 of 1972 read with its amendments, more particularly Act, No. 55 of 1980.

The agreed rent recovered by the plaintiff was Rs.104.75 per mensem. Hence Rs. 6285/- (60 x 104.75) being five years' agreed rent was deposited by the plaintiff in terms of section 22(2) (bb) (ii) with the Commissioner of National Housing.

The learned District Judge of Mt. Lavinia by his judgment dated 01.10.1992 dismissed the action of the plaintiff on the ground that the authorised rent of the premises in suit was Rs. 1367/- per annum and five years' rent therefore amounted to (Rs. 1367 x 5) Rs. 6835/-) and the deposit of Rs. 6285/- was insufficient.

This appeal is from that judgment.

The defendant in terms of section 772(1) read with section 758(e) of the Civil Procedure Code having given notice of objection to a part of the judgment while supporting the finding that the plaintiff's case be dismissed, submitted that the learned District Judge had erred in holding that the provisions of section 22(7) of the Rent Act did not act as a bar to the maintenance of this action.

Thus two questions arise for decision in this case:–

(i) Whether 5 years' rent in section 22(2) (bb) (ii) refers to the agreed rent or the authorised rent?

(ii) Whether the provisions of section 22(7) of the Rent Act applies to the facts of this case and therefore acts as a bar to the maintenance of this action?

These two matters would now be examined.

(1) Section 22(2) (bb) (ii) of the Rent Act.

Section 22(2) (bb) (ii) relevant to this case runs as follows:

"22(2). Notwithstanding anything in any other law, no action or proceeding for the ejectment of the tenant of any residential premises the standard rent (determined under section 4) of which for a month exceeds one hundred rupees shall be instituted in or entertained by any Court. unless where in the case of premises let to a tenant whether before of after the date of commencement of this Act and where the landlord is the owner of not more than one residential premises the landlord of such premises has deposited prior to the institution of such action or proceedings a sum equivalent to five years' rent with the Commissioner for National Housing for payment to the tenant".

Learned President's Counsel for the defendant-respondent has supported the conclusion reached by the District Judge, Mt. Lavinia in this regard on the following grounds:–

(1) The only rent payable by the tenant in terms of the Rent Act is the authorised rent.

(2) Section 22(2) (bb) (ii) of the Rent Act does not contemplate a refund of the rent paid for the previous five years. It is nothing more or nothing less than the authorised rent for 5 years which is expected to be paid.

(3) If agreed rent in excess of the authorised rent cannot be paid by a tenant since it is illegal to pay, it is equally plausible that agreed rent less than the authorised rent should not be accepted.

(4) Not using the adjective "authorised" to the word "rent" was a draftsman's error. So Court can intervene and give the appropriate meaning to the word "rent".

(5) Parliament's intention was payment of 5 years of "authorised rent".

These submissions would now be examined.

The word "rent" is not defined in section 48 of the Rent Act. Yet the word "rent" has different connotations in the Rent Act meaning sometimes agreed rental, sometimes authorised rent, sometimes standard rent, sometimes proportionate rent and so on. Each meaning has a specific nuance and one meaning cannot be substituted for the other. The appropriate meaning has to be therefore gathered from the context if the relevant adjective explaining the word "rent" is not used. But what is significant to note is that the word "authorised rent" has not been substituted by law for the word "rent" (meaning agreed rental) in the Rent Act. The Common Law of letting and hiring still exists. The Rent Act has only brought in certain significant restrictions and reservations in the working of the Common Law. There is nothing in the Rent Act which says if the agreed rent of a premises is an amount **less** than the authorised rent such amount should be superseded by the authorised rent on the Rent Act coming

into operation. Of course the converse is true. If the agreed rental is **more** than the authorised rent the landlord shall not be able to demand, receive or recover as rent any amount in excess of the authorised rent from the date of commencement of the Act nor increase the rent to an amount in excess of the authorised rent. [vide section 3(1) of the Rent Act]. The tenant is also prohibited from paying or offering to pay any rent in excess of the authorised rent [vide section 3(2)]. The Act goes so far as to authorise recovery of payments in excess of the authorised rent or deduct such excess amount paid from the rent payable by the tenant to the landlord (vide section 32).

But section 31 of the Rent Act is significant. It says:

> "31. Where an action for the ejectment of any person from any premises occupied by him as a tenant is dismissed by any court by reason of the provisions of this Act, his occupation of those premises for any period prior or subsequent to the dismissal of such action shall, without prejudice to the provisions of this Act, be deemed to have been or to be under the original contract of tenancy".

Thus the Rent Act protected the original contract of tenancy subject to the restrictions placed on such contract by the Rent Act. There was no question of new terms being incorporated by implication into the original contract of tenancy. In other words subject to the landlord being restricted from collecting a rent over and above the authorised rent the original contract of tenancy was allowed to subsist.

It is in this context that the meaning of the word 'Rent' in section 22(2) (bb) (ii) should be gathered.

If the intention of the legislature was that in section 22(2) (bb) (ii) "Rent" should mean authorised rent the draftsman would most certainly have used such an adjective in front of the word 'Rent' as in section 18A (2) (b) (II) of the Rent Act. We must therefore come to the

conclusion that the word "Rent' was used intentionally. That is, in the case of those paying a monthly rental at the rate of the authorised rent or higher than the authorised rent the five years' rent should be calculated by multiplying the authorised rent by 60, while in the case of those paying a monthly rental less than the authorised rent it shall be calculated by multiplying such monthly rental by 60. This interpretation is fortified by the fact that with the passing of the Amendment Act No. 55 of 1980 in which section 22(2) (bb) (ii) was enacted. Section 7 and 8 of the Rent Act, No. 7 of 1972 were repealed.

Under section 7(2) of the Rent Act No. 7 of 1972 neither the landlord nor the tenant shall demand or pay respectively, as the rent of a premises any amount "which is less than the receivable rent of such premises". Receivable rent prior to Amending Act No. 58 of 1980 was the highest amount established to the satisfaction of the Rent Board received by the landlord by way of rent for any month during the period of two years immediately preceding the date of commencement of Act, No.7 of 1972 **or** where the premises had not been let to a tenant such amount determined by the Rent Board.

The concept of receivable rent which fixed the Rent to an ascertainable amount and which amount alone was **payable by the tenant or receivable by the landlord** went into disusage with the coming in of the Amending Act No. 55 of 1980. The fact that section 7 was repealed while section 22(2) (bb) (ii) was incorporated would mean that the word "Rent" in section 22(2) (bb) (ii) referred to the agreed rental unless such agreed rent was over and above the authorised rent.

It would be unreasonable on the part of a tenant to pay an amount less than the authorised rent as agreed rental and then expect an enhanced amount (authorised rent) to be deposited in terms of section 22(2) (bb) (ii) by the landlord.

Even in section 22(1) (a) the meaning of the word "Rent" is 'agreed rental' and not 'authorised rent'. In fact if the agreed rental is less

than the authorised rent there is no provision in the Rent Act to sue for the difference between the agreed rental and the authorised rent though section 32 allows the recovery of payments in excess of authorised rent. Even to increase the rental from a lesser agreed rental amount to the authorised amount the landlord must terminate the original contract of tenancy based on the agreed rental and then only call upon the tenant to pay the authorised rent. This is because of the fact that the original contract of tenancy (in terms of section 31 of the Rent Act) is deemed to subsist and such contract carries with it certain rights and obligations which have to be conformed to.

Thus in the absence of any law forbidding the landlord accepting an agreed rental less than the authorised rent it would be insensible to call upon him to deposit 5 years' rent based on the authorised rent which is higher than the rent he received for his house. If suppose the authorised rent of a premises was Rs. 140/- per month and the landlord was recovering Rs. 101/- per month for a long number of years, whereas another landlord for a similar house with a similar authorised rent was recovering the authorised rent of Rs. 140/- per month, according to the interpretation given by the learned District Judge both landlords would have to deposit five years' rent calculated at Rs. 140/- per month. This would be most unreasonable. As rightly observed by the learned President's Counsel appearing for the plaintiff-appellant, by a process of interpretation the severity of the Rent Act should not be further increased. Further, the Rent Act should not be interpreted to be uncharitable to a landlord of charitable disposition who willingly may have accepted a rent lower than the authorised rent.

The Rent Act and its predecessors no doubt were social legislation brought in to curb the rapaciousness of heartless landlords. Such legislation had so many connotations one of which was the inability of the State to cope up with the increasing demand for houses at reasonable rentals. Section 22(2) (bb) (ii) of the Rent Act it must be remembered, carries with it a basic qualification necessary on the part of the landlord to come under that section viz. that he "is the owner of not more than one residential premises". Such landlords

could not be equated to the rapacious landlords of an earlier period. The Rent Act therefore should not be used to pummel a dead serpent if one were to borrow a pithy Tamil saying.

This Court is therefore unable to agree with the submissions of the learned President's Counsel appearing for the defendant-respondent. In fact it is wrong to say that the only rent payable by the tenant in terms of the Rent Act is the authorised rent. He could either pay the agreed rental less than the authorised rent or the authorised rent itself since the concept of receivable rent is no more law. When calculating five years rent it is certainly not a refund of money paid during five years prior to the relevant time. There is a possibility of the tenant having paid a lesser amount as agreed rental, the parties subsequently going before the Board and having an enhanced amount fixed as authorised rent. Then a new tenancy on the basis of the higher authorised rent could have come into being during the five year period prior to the relevant time (i.e. time of conforming to the provisions of section 22 (2) (bb) (ii)). Then the five years' rent would be based on the authorised rent. It shall not be part authorised and part agreed rent. But so long as the rent paid at the relevant time [meaning the time at which the deposit has to be made in terms of section 22(2) (bb) (ii)] is an amount which is an agreed rent less than the authorised rent of the authorised rent itself such agreed rent or authorised rent respectively shall be the basis for the calculation of the 5 years' rent. There is no connection between an agreed rental over and above the authorised rent and an agreed rent less than the authorised rent. The lesser amount could form the basis of a valid contract of tenancy while the higher amount is made illegal by statute. There is provision in law for the tenant to recover the excess payment. There is no specific provision in law for the landlord to recover the difference between his lesser agreed rent and a higher authorised rent. Under the circumstances there is no need to unnecessarily add the adjective 'authorised' to the word 'Rent' in section 22(2) (bb) (ii). It must mean simply the agreed rental unless such agreed rental is over and above the authorised amount in which event the agreed rental is statutorily reduced to the authorised rent. It would be thus erroneous to argue that Parliament meant by "five

years' rent" five years' authorised rent" in the light of what has been hereinbefore enumerated.

Thus I come to the conclusion that the learned District Judge had erred in his determination of issues 3 and 4.

Let us discuss next the matter in issue in cross appeal.

Section 22(7) of the Rent Act.

The learned President's Counsel on behalf of the defendant-respondent has taken up the position that the plaintiff-appellant could not have instituted and maintained this action in view of the bar created by section 22(7) of the Rent Act.

The relevant part or portion of section 22(7) of the Rent Act is as follows:–

22(7) "Notwithstanding anything in the preceding provisions of this section, no action or proceedings for the ejectment of the tenant of any premises referred to in subsection (1) or subsection (2) (i) shall be instituted where the landlord is the owner of not more than one residential premises, on the ground that the landlord of such premises has deposited prior to the institution of such action or proceedings a sum equivalent to five years' rent with the Commissioner for National Housing for payment to the tenant, where the ownership of such premises was acquired by the landlord, on a date subsequent to the specified date, by purchase or by inheritance or gift other than inheritance or gift from a parent or spouse who had acquired ownership of such premises on a date prior to the specified date: ..."

"In this subsection, "specified date" means the date on which the tenant for the time being of the premises, or the tenant upon whose death the tenant for the time being succeeded to the tenancy under section 36 of this Act or section 18 of the Rent Restriction Act (No. 29 of 1948), came into occupation of the premises."

The original tenant of the premises was defendant's mother Mrs. W. L. de Silva. After Mrs. W. L. de Silva's death the present defendant succeeded to her mother's tenancy. Earlier case No. 1327/L instituted on 12.06.72 and decided on 11.04.74 was between present plaintiff's father D. D. Wijeratne and the present defendant.

When tenancy commenced plaintiff's father D. D. Wijeratne was not the owner in 1943. He however got his ownership from his mother Charlotte Josephine Wijeratne in 1956 on Deed V4.

When D. D. Wijeratne acquired ownership in 1956 defendant's mother W. L. de Silva was in occupation as a tenant. The present plaintiff became owner in 1985 by V3.

The learned Counsel for the defendant-respondent argued that the plaintiff acquired ownership **subsequent** to the specified date by gift from a parent. Such parent, he said, had not obtained ownership on a date prior to the specified date in terms of section 22(7). Thus it was alleged that the bar created by 22(7) applied to the present plaintiff [Vide definition of "specified date" above]. He submitted that the plaintiff got ownership after the 'specified date' from a person who had himself acquired ownership after the 'specified date'. Both of them getting the property as gifts from their respective parents will not help the plaintiff it was argued. The learned Counsel for the plaintiff-appellant argued that in 1960 the appellant's father D. D. Wijeratne was the owner of the premises. Defendant's mother became tenant only after D. D. Wijeratne became owner. Thereafter he gifted the said premises to the plaintiff-appellant in 1985. Since this gift is a gift from father to daughter over the head of the existing tenant the bar would not apply.

These submissions would now be examined.

The crucial question appears to be what is the "specified date" as per the facts of this case. Before we examine this question let us find out the import of section 22(7).

What is contemplated in section 22(7) of the Rent Act with reference to this case is as follows:–

If the landlord acquired ownership of the premises in suit on a date subsequent to the 'specified date' by inheritance or gift from her parent who had himself acquired ownership of such premises on a date **prior** to the 'specified date' then the bar will not apply. Otherwise by implication the bar would apply.

Generally any purchase or inheritance or gift subsequent to the specified date over the head of the tenant bars a landlord from filing action against his or her tenant. The exception is inheritance or gift from a parent or spouse who had himself acquired ownership of the premises in suit on a date **prior** to the 'specified date'.

The 'specified date' means the date on which the tenant for the time being of the premises or the tenant upon whose death the tenant for the time being succeeded to the tenancy (that is the defendant-respondent in this case) came into occupation of the premises.

Charlotte Josephine Wijeratne was the original owner of the premises in suit. She gifted it to her son Dayananda Donald Wijeratne on 19.08.1956. The latter gifted the same property to his daughter the present plaintiff-appellant on 17.05.85.

In D.C. Colombo case No. 13427/L which was filed by Dayananda Donald Wijeratne the father of the present plaintiff, against the present defendant, it was held by judgment dated 11.04.74 that in or about October 1960 the mother of the defendant in this case, Mrs. W. L. de Silva, having died the defendant became a tenant of Dayananda Donald Wijeratne. Even though the father of the plaintiff in this case tried to maintain in that case that the brother of the plaintiff in this case (Kenneth de Silva) was the tenant even prior to and after October 1960 ample number of receipts in favour of Mrs. W. L. de Silva had been submitted to Court. The Court observed in that case that the original tenant was Mrs. W. L. de Silva the mother of the

defendant in this case [vide page 114 of the Brief]. Issue No. 3 in that case was also answered in the affirmative recognising the present defendant as the tenant of the father of the present plaintiff. In the present case the learned District Judge has answered issues 10-17 in favour of the defendant in this case vis-a-vis case No. 13427/L. He has held that the decision in Case No. 13427/L acts as *Res Judicata* between the parties.

Thus we are now possessed of all the relevant facts to answer the question that has arisen. A diagram would explain the matter fully.

1. Charlotte Josephine Wijeratne (Grand mother of Plaintiff)

   gifted on 19.08.1956 to son

2. Dayananda Donald Wijeratne (father of the Plaintiff)

   gifted on 17.05.1985 to daughter

3. Plaintiff

1. from 1943 or thereabout Mrs. W. L. de Silva

   died October 1960

2. The defendant (daughter)

   entitled to tenancy in terms of section 18 of the Rent Restriction Act.

Thus the present landlord acquired ownership by gift from a parent who had acquired ownership at a time when the mother of the present tenant was the tenant. The 'specified date' for the purpose of this case would then be the date on which the mother of the defendant came into occupation of the premises in suit. That was in 1943. At that stage the father of the plaintiff was not the owner.

Therefore clearly the father of the plaintiff had acquired ownership of the premises in suit on a date subsequent to the specified date.

The learned President's Counsel for the plaintiff-appellant sought to argue that 'specified date' means the date on which the tenant for the time being of the premises came into occupation. According to him since the present tenant, after D. D. Wijeratne obtained ownership in 1956, was tenant or the premises in suit around 1960 the bar would not apply. According to him the specified date was around October 1960 by which time the father of the plaintiff had obtained prior ownership and thereafter subsequent to the specified date gifted to the plaintiff. He therefore sought to get the benefit of the exception under section 22(7).

There is a fallacy in this argument. 'Specified date' cannot mean the date on which the present tenant came into occupation if in fact he or she had **succeeded** in tenancy. If the present tenant from the beginning of the tenancy had been in occupation of the premises the 'specified date' would be the date he or she initially started the tenancy. But where he or she succeeded to the tenancy by the death of an earlier tenant the specified date would be the date on which the deceased (previous) tenant started the tenancy. Thus the two types of tenants mentioned in the interpretation paragraph at the end of section 22(7) must be clearly understood. If the 'specified date' were to be always the date on which "the tenant for the time being of the premises" came into occupation there would have been no reason to include the other category viz. "the tenant upon whose death the tenant for the time being succeeded to the tenancy." The explanation thus of 'specified date' would be,

(i) Where the tenant for the time being of the premises is the original tenant who entered into the contract of tenancy then it is the date on which such tenant came into occupation of the premises.

(ii) Where the tenant for the time being is not a person who originally entered into the contract of tenancy but one who had succeeded to the tenancy in terms of section 36 of the Rent Act or section 16 of the Rent Restriction Act then it would be the date on which the previous tenant came into occupation of the premises.

The category that applies to the facts of this case is therefore (ii) above. The present tenant succeeded her mother in October 1960. But October 1960 will not be the specified date. It would be *circa* 1943 when her mother came into occupation of the premises.

In this case the ownership of the premises in suit was acquired by the plaintiff landlord on a date after 1943 (specified date). It was by gift from a parent in 1965. To escape the bar set out in section 22(7) such parent of the landlord should have acquired ownership of such premises on a date prior to 1943 (specified date). But the parent of the landlord acquired ownership much later in 1956. Therefore the bar would apply to the facts of this case.

It is unfortunate that the learned District Judge in this case had failed to consider the documentary evidence led before him when he answered issues 6 and 7 as not being proved. Just as much as issue numbers 10 – 17 were covered by the judgment in case No. 13427/L, issue Nos. 6 and 7 too were covered by the judgment in the said case. If he had answered issues 6 and 7 correctly he would have answered issue No. 9 against the plaintiff-appellant.

Thus his answers to issue nos. 3,4, 6, 7 and 9 are erroneous. This Court after consideration of the evidence led before the learned District Judge both documentary and oral, and the submissions made by Counsel on both sides and after examining the law that is relevant comes to the conclusion that the answers to issues 3, 4, 6, 7 and 9 should have been as follows:–

3. පැමිණිලිකාරිය විසින් ගෙවල් කුලී පනතේ 1980 අංක 55 දරන සංශෝධනය පරිදි වර්ෂ 05 ක කුලියකට සමාන මුදලක් චිත්තිකාරියට ගෙවීම සඳහා ජාතික නිවාස කොමසාරිස් වෙත තැන්පත් කොට ඇද්ද?

ඔ: එසේය.

4. ඉහත සඳහන් විසඳිය යුතු ප්‍රශ්නයෙන් පැමිණිල්ලේ වාසියට පිළිතුරු ලැබෙන්නේ නම් පැමිණිල්ලේ ඉල්ලා ඇති සහනයන්ට හිමිකම් ලබයි ද?

ළ එසේය. නමුත්, විසඳිය යුතු ප්‍රශ්න 9 යේ පිළිතුරට යටත්ව.

6. විත්තිකාරිය එසේ කුලී නිවැසියා බවට පත්වුනේ විත්තිකාරියට කලින් එකී ස්ථානයේ කුලී නිවැසියා වූ ඇයගේ මව වූ ඩබ්. එල්. ද සිල්වා මියගේ කුලී නිවැසි භාවයට අනුප්‍රාප්ත වීමෙන්ද?

ළ: එසේය.

7. එකී ඩබ්ලිව්. එල්. ද. සිල්වා මිය එකී ස්ථානයේ කුලී නිවැසියා ලෙස පදිංචියට පත්වුනේ 1943 වර්ෂයේද?

ළ: එසේය.

9. ඒ අනුව ගෙවල් කුලී පනතේ 22 (7) වගන්තිය ප්‍රකාරව පැමිණිලිකාරියට මෙම නඩුව පවරා පවත්වා ගෙන යා හැකිද?

ළ: නැත.

We therefore allow the apeal and vary the judgment of the learned District Judge by answering the relevant issues as stated above. The learned District Judge's final determination will stand, in that the plaintiff's original action remains dismissed with costs.

Both parties shall bear their respective costs of this appeal.

WEERASEKERA, J. – I agree.

Appeal allowed.