WIGNESWARAMOORTHY AND ANOTHER

v.

SINGHAM

SUPREME COURT.
G. P. S. DE SILVA, C.J.
KULATUNGA, J.
RAMANATHAN, J.
S.C. APPEAL NO. 12/59
C.A. 54/85(F) COLOMBO 5931/RE
D.C. COLOMBO 5931/RE
JANUARY 25, 1995.

Landlord and Tenant – Notice to quit – Sections 22(2) (bb) (ii) and 22(6) of the Rent Act – Test of validity of notice – "ut res magis valeat quam pereat" – Construction.

Under Section 22(6) of the Rent Act six months notice in writing of the termination of the tenancy had to be given prior to institution of the action for ejectment. Notice of termination of tenancy was given by letter dated 27 August 1983 requiring the tenant to vacate the premises on or before 28 February 1984. This notice was received by the tenant on 30 August 1983. The tenancy had commenced on the 1st of the month. Therefore the period of 6 months has to be computed from 01 September 1983. The period of six months ends on 29 February 1984 as 1984 was a leap year. As the notice required the tenant to vacate on 28 February 1984 there was a shortfall in the notice by one day.

Held:

The proper approach to the question of the validity of the notice is to consider the intention of the person giving the notice. A reasonable tenant reading the notice in a reasonable way could not arrive at any other conclusion than that the intention was to terminate the tenancy by the end of February 1984. The clear intention of the landlord was to terminate the tenancy at the end of February 1984; the fact that February had 29 days was overlooked. This is a fit and proper case to construe the notice "*ut res magis valeat quam pereat*". The notice was valid in law.

Cases referred to:

1. *Warwick Major v. Fernando* IV CWR 221.
2. *Loku Menike v. Charles Sinno* V CWR 281.
3. *Hankey v. Clavering* (1942) 2 All ER 311.
4. *Haniffa v. Sellamuthu* 70 NLR 200.
5. *Sidebotham v. Holland* (1895) 1 QB 378, 383.
6. *Carradine Properties Ltd. v. Aslam* (1976) 1 All ER 573.

APPEAL from judgment of the Court of Appeal.

S. Mahenthiran for the plaintiff-appellants.
P. A. D. Samarasekera, P.C. with *Palitha Kumarasinghe* for the defendant-respondent.

Cur. adv. vult.

April 28, 1995.
G. P. S. DE SILVA, C.J.

The plaintiffs instituted these proceedings on 6th April 1984 for the ejectment of the defendant (tenant) from the premises in suit under the provisions of section 22(2) (bb) (ii) of the Rent Act, as amended. After trial, the District Court entered judgment for the plaintiffs. The defendant successfully appealed to the Court of Appeal and the judgment of the District Court was set aside and the plaintiffs' action dismissed. Hence the appeal by the plaintiffs to this court.

Special Leave to Appeal to this court was granted only on the following question:–

"Is the notice to quit marked P1 valid in law?"

The Court of Appeal held against the plaintiffs solely on the ground that "the notice to quit is bad in law and it has no force or effect and validity."

It is a peremptory requirement postulated in the proviso to section 22(6) of the Rent Act, as amended, that the landlord should give the tenant "six months notice in writing of the termination of the tenancy" prior to the institution of the action. Mr. Samarasekera for the defendant-respondent rightly submitted that such notice was a condition precedent to the institution of the action for ejectment.

The notice P1 was dated 27th August 1983 and it required the defendant to vacate the premises on or before "the 28th day of February 1984." The notice was in fact received by the defendant on 30th August 1983. It is common ground that the tenancy commenced on the 1st of the month. Therefore the period of 6 months has to be computed from 1st September 1983 *(Warwick Major v. Fernando* [1]; *Loku Menike v. Charles Sinno* [2]).

The period of 6 months expires at the end of February 1984. The point to be noted is that 1984 is a **leap year** and there are 29 days in the month of February. The notice P1 calls upon the defendant to vacate the premises by 28th February and thus there is a shortfall by one day. The defendant was entitled to occupy the premises till the expiry of 29th February 1984.

Citing *Hankey v. Clavering* [3] Mr. Samarasekera stressed that notices to determine a tenancy are "documents of a technical nature, ... They are not consensual documents;" Counsel strongly urged that if there is any defect in the notice of termination of tenancy the action for ejectment must fail; a valid notice of termination of tenancy is a condition precedent to the institution of the action. Mr. Samarasekera further pointed out that the witness (an Attorney-at-Law) called on behalf of the plaintiffs admitted that 6 months notice of termination of tenancy has not been given to the defendant in this case.

It is clear that the notice of termination of tenancy (P1) falls short of the requisite period of 6 months **by one day**. On a careful consideration of the facts, it would appear that the writer of the notice P1 overlooked the fact that 1984 was a leap year and accordingly there were 29 days in the month of February. The defendant did not give evidence at the trial nor were any witnesses called on her behalf. There was no evidence whatsoever to suggest that she was in anyway misled by the requirement that she should vacate the premises by the 28th and not by the 29th of February. The opinion expressed by the witness called by the plaintiff is not relevant, as the construction of P1 raises a question of law. The fact that the witness for the plaintiff maintained in his evidence that there was no mistake in P1 does not advance the case for the defendant.

In my view, the proper approach to the question of the validity of P1 is to consider the intention of the person giving the notice. This was the principle laid down by T. S. Fernando, A.C.J. (with whom Siva Supremaniam, J. agreed) in *Haniffa v. Sellamuthu* [4]. The learned Judge expressed himself in the following terms: "The substantial question in all cases of this kind is the intention of the person giving the notice as expressed therein." The judgment cites with approval the following dictum of Lindley, L.J. in *Sidebotham v. Holland* [5]. "The validity of a notice to quit ought not to turn on the splitting of a straw". If I may be permitted to say so, the reasoning in *Haniffa's* case (*supra*) is refreshingly free of undue technicality and is in consonance with a common sense point of view.

Carradine Properties Ltd. v. Aslam [6] cited by Mr. Mahenthiran for the plaintiffs respondents is another case where a somewhat similar view was taken in regard to the validity of a notice to quit. Goulding, J. having referred to several cases stated thus: "I would put the test generally applicable as being this: is the notice quite clear to a reasonable tenant reading it? Is it plain that he cannot be misled by it?"

In the appeal before us, could a reasonable tenant reading P1 in a reasonable way arrive at any other conclusion than that the intention

was to terminate the tenancy by the end of February 1984? I think not. There was no evidence whatever to the contrary. As stated earlier, the tenant neither gave evidence nor called any witnesses on her behalf. Viewed realistically, the insertion of the date February 28 in P1 was an obvious mistake; the fact that 1984 was a leap year was overlooked. I venture to think that the law relating to the termination of tenancy by a notice as contemplated by the proviso to section 22(6) of the Rent Act does not compel a court to completely shut its eyes to reality.

I accordingly hold that the clear intention of the landlord was to terminate the tenancy at the end of February, 1984; the fact that February had 29 days was overlooked. In my view this is a fit and proper case to construe the notice P1 "*ut res magis valeat quam pereat*". I reverse the finding of the Court of Appeal and hold that P1 is valid in law.

Finally, Mr. Samarasekera submitted that in any event the plaintiffs are not entitled to a decree in ejectment as they have failed to establish that the standard rent of the premises in suit exceeds Rs. 100/- per month. Special Leave to Appeal has been granted only on the question of the validity of P1, and it not now open to the defendant to raise any other issue.

In the result, the appeal is allowed with costs, the judgment of the Court of Appeal is set aside and the judgment of the District Court is restored. However, I direct writ of ejectment not to issue till 30th April 1996. The plaintiffs are entitled to take out writ of ejectment and to be placed in possession of the premises in suit after 30th April, 1996.

KULATUNGA, J. – I agree.

RAMANATHAN, J. – I agree.

Appeal allowed.