HILMI v. DE ALWIS

COURT OF APPEAL
RANASINGHE, J. & VICTOR PERERA, J.
C.A. (S.C.) 280/79 F; D.C. COLOMBO 294
JULY 22 & 23, 1980

Landlord and Tenant – Rent Act, No. 7 of 1972, sections 22(2)(b); 22(6); and 22(8) – Reasonable requirement of premises for occupation as residence by the landlord – Rent Restriction Act, No. 29 of 1948, section 13.

Premises were given on rent by the landlord, a government servant on a gentleman's agreement to get it back when he reached his retirement. The tenant refused to quit the premises when required to do so by the landlord. The landlord thereupon gave the tenant one year's notice of the termination of the tenancy in terms of section 22(6) and filed action on the ground of reasonable requirement.

Held:

Where a landlord requires a premises for his own occupation and the tenant has made no serious effort to secure other accommodation or to retain other accommodation which might have been available, a court called upon to form an opinion as to reasonableness will be justified in granting a landlord a decree in ejectment. The requirement of one year's notice relieved to some extent a burden that may have been laid on the landlord.

Cases referred to:

1. *Andree* v. *De Fonseka* (1950) 51 NLR 213.
2. *Arnolis Appuhamy* v. *De Alwis* (1958) 60 NLR 141.
3. *Swamy* v. *Gunawardene* (1958) 61 NLR 85.
4. *Abdul Rahim* v. *M. D. Gunasena Corporation Ltd.* (1964) 66 NLR 419.
5. *Gunasena* v. *Sangaralingam Pillai and Company* (1948) 49 NLR 473.

APPEAL from the Order of the District Court of Colombo.

C. Renganathan, Q.C. with *K. Shanmugalingam* for defendant-appellant.

J. W. Subasinghe with *N. S. A. Gunatilaka* for plaintiff-respondent.

Cur adv vult.

14th August, 1980
VICTOR PERERA, J.

This is an appeal by the defendant in the above case instituted by the plaintiff-respondent on 26th July 1977 for ejectment of the defendant-appellant from premises No. 240/4, Torrington Avenue, Colombo 7, and for recovery of damages. The plaintiff-respondent had been a public servant from 1940 and had retired as Government Agent, Colombo, on 31.5.75 on his reaching the age of 58 years. According to his evidence, as a public servant he was given official residence at

Wijerama Mawatha from November 1970. At that time he was the owner of a house at Spathodea Avenue which he sold in July 1974. With the money realised from the sale of this house and other money he had, he purchased premises No. 240/4, Torrington Avenue, and obtained vacant possession thereof. He had the house repaired and colour-washed. According to the defendant-appellant's evidence the house had been kept closed for sometime. The defendant-appellant was living close to the premises in premises No. 250/1/1, Torrington Avenue with his wife and daughter from 1970 paying Rs. 275/- per month and was not known to the plaintiff-respondent.

According to the defendant-appellant he was the Manager of Wellawatte Spinning and Weaving Mills and of the shop run at Ceylinco House, Fort. Sometime in 1974 the plaintiff-respondent had come into the shop at Ceylinco House to buy some materials and had introduced himself as the Government Agent. According to the defendant-appellant he stated in his own words, "in the course of the conversation, he asked me where I am presently residing. I told him that I was staying at 250/1/1, Torrington Avenue. He was surprised and stated that it was close to his house. Then I asked him why he is keeping it closed for sometime. He said he wanted to get a very good tenant who will look after the house and maintain it."

This evidence would indicate that the plaintiff-respondent having purchased the premises kept it closed for sometime till this chance meeting of the defendant-appellant. The defendant-appellant did not appear to be in want of a house as he was in occupation of a flat from 1970 close to the premises and nowhere in his evidence did he state that he was in need of a house or was on the look out for a house.

In the background of these facts the evidence of the plaintiff-respondent that at the discussion that ensued the defendant-appellant had promised to give back the house to him on his retirement and that until then he would continue to keep the premises he was presently occupying as well, which were immediately behind would appear quite probable. It was the evidence of the defendant-appellant that even after he went into occupation of these premises No. 240/4, he was paying the rent and maintaining premises No. 250/1/1 and obtained receipts in his name till October 1977 and that he had given these premises to his sister and brother-in-law. Except for his bare statement that he collected the rent from them, there was no corroboration of this version from his brother-in-law or sister nor from his landlord K. A. Dissanayake Silva.

K. A. Dissanayake Silva, the owner of premises No. 250/1/1 gave evidence that he owned four flats. He stated that the defendant-appellant was his tenant for 12 years and that he last paid rent to him

in October 1977. He stated that he gave the defendant-appellant no authority to give the premises to his brother-in-law and sister and he was surprised to find some people there. In October 1977 he wanted the flat back as some others were occupying it and he also stated that if the defendant-appellant wanted to, he had the right to re-occupy this flat. The householder's list produced showed that from 1973 which were up to the period covering 1977 the only occupants of premises No. 250/1/1 were the defendant-appellant and his family. This would indicate that the defendant-appellant had not given up the use and control of premises No. 250/1/1 at any time.

The plaintiff-respondent's position was that he expected to come into occupation of his premises on his retirement. He expected to work till he reached 60 years but he was not given an extension and had to retire on 31.5.75. When he learnt that he was not getting an extension, the plaintiff-respondent stated that he immediately informed the defendant-appellant and the defendant-appellant agreed to give him the house in December 1975. In December 1975 the plaintiff-respondent states that he requested the defendant-appellant to remain there till April 1976 as his daughter was preparing for the G.C.E. (Advanced Level) Examination and that he did not wish to disturb her studies till the examination was over. When he felt that the defendant-appellant would not shift in April 1976 he sent a notice dated 14.3.76 (P1). In P1 the plaintiff-respondent reminded the defendant-appellant about the gentleman's agreement entered into when the house was given to him and various other events which he has referred to in his evidence and requested him to vacate the premises by 30th April 1976. The defendant-appellant through his Attorney-at-law replied that letter by a letter dated 28.4.76 (P2) denying any such agreement and claiming his rights under the Rent Laws. Thereupon on 18.5.76 the plaintiff-respondent gave notice under section 22(6) of the Rent Act, No. 7 of 1972 requesting the defendant-appellant to vacate the premises at the end of one year as he required the premises for occupation as a residence.

As the defendant-appellant failed to vacate the premises in terms of the notice, this action was instituted after the expiry of one year in July 1977. In the plaint the plaintiff-respondent referred to the agreement, he pleaded that after he retired he was finding it difficult to pay Rs. 850/- as rent for the premises he was in occupation of as a tenant, that all his children were unmarried and dependent on him and that he had no other house of his own. The defendant--appellant denied the several averments in the plaint and pleaded that the plaintiff-respondent could continue to live in the premises he was living as the rent was not Rs. 850/-, that the children of the plaintiff-respondent were all grown up and independent and that the plaintiff-respondent had other houses of his own which he could use as his residence. One would have

expected the defendant-appellant when he made these specific averments to be possessed of certain facts within his knowledge which he proposed to prove in order to defeat the plea that the plaintiff-respondent reasonably required the premises for his own occupation.

The case proceeded to trial on 25.6.79 on the following issues raised on behalf of the plaintiff-respondent:–

1. Are the premises in suit reasonably required for the occupation of as a residence for the plaintiff?

2. Has the plaintiff given the defendant notice dated 18.5.76 as required by section 22(6) of the Rent Act, No. 7 of 1972 ?

3. If issues 1 and 2 are answered in the affirmative, is the plaintiff entitled to –

   (a) an order ejecting the defendant from the said premises; and

   (b) to recover damages from 1.6.77 calculated at Rs. 850/- a month or at such other rate?

The defendant-appellant who specifically pleaded the aforesaid matters did not raise any issues.

After hearing evidence led on behalf of the plaintiff-respondent and the defendant-appellant, the learned District Judge held that the premises in suit are reasonably required for occupation as residence for the plaintiff and his family. He answered issues 1, 2 and 3(a) in the affirmative and awarded damages in the sum of Rs. 850/- a month from 1.6.77 and ordered decree to be entered in under section 22(8) of the Rent Act, No. 7 of 1972. The defendant-appellant appealed from this judgment and obtained a stay of the execution of writ.

The question to be decided in this appeal is whether the trial Judge had come to an incorrect finding in favour of the plaintiff-respondent on the totality of the evidence led on behalf of the plaintiff-respondent and defendant-appellant.

The plaintiff-respondent had filed this action for ejectment on the basis of the provision in Section 22 of the Rent Act, No. 7 of 1972. Section 22(2) provides that:

> "Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of –
>
> 1. any residential premises the standard rent of which for a month exceeds Rs. 100/- etc.

shall be instituted in or entertained by any court unless where –

(b) the premises are, in the opinion of the court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord etc."

This Section is similar to the provisions of the Section 13 of the Rent Restriction Act, No. 29 of 1948 as amended from time to time. The question of reasonable requirement of the premises by a landlord under the Rent Restriction Act had been the subject of a series of decisions of the Supreme Court and various aspects that came up for consideration such as (1) the time at which the landlord's requirement is assessed, (2) whether it is inherent in the criterion of reasonableness that the position of the tenant too should be looked into, (3) the comparative means of the landlord and the tenant and (4) *bona fides* of the landlord had been examined and commented upon.

In the case of *Andree v. De Fonseka,*[1] Gratiaen, J. stated:

"the reasonableness of the landlord's demand to be restored to possession for the purpose of his business must be proved to exist at the date of the institution of the action".

In the case of *Arnolis Appuhamy v. De Alwis,*[2] Sansoni, J. said:

"I have already indicated my view as to the time at which reasonableness of the landlord's demand must be proved to exist. I **would not confine it** to the time of the institution of the action".

In the case of *Swamy v. Gunawardene,*[3] Weerasooriya, J. held:

"When a landlord sought to eject his tenant on the ground that the premises were required for his own occupation, the question whether the premises were so required should be decided with reference to the **state of affairs existing at the time of trial** and not at the date of the institution of the action".

In *Abdul Rahim v. Gunasena Corporation Ltd.*[4] Sri Skanda Rajah, J. and Alles, J. expressed agreement with the views expressed by the Judges in the earlier cases.

In the light of these decisions of the Supreme Court, one has to examine the evidence on this aspect of the matter. The plaintiff-respondent's evidence is that he had purchased the premises shortly prior to his retirement in order to move into it after retirement. He had retired on 31.5.75 and had to rent out another house as he had to

vacate the official quarters and that he has been paying Rs. 850/- as rent for the house he was presently in occupation. His wife and three unmarried children were his dependants. His two sons were being educated abroad and were expected at the end of **July 1979.** This was what the Plaintiff-respondent testified in Court on **25th June 1979** when he was giving evidence. The evidence in the case was concluded on that date. It was not proved that he had any house of his own which he could move into. The fact that the house in dispute had been kept closed until as a result of a casual meeting with the defendant-appellant, the plaintiff-respondent offered the house to the defendant-appellant who did not even testify that he was in need of or on the look out for a house though he was living in the adjoining house for nearly 12 years lends support to the plaintiff-respondent's evidence that there was the gentleman's agreement relied on by him. Even the fact after the institution of this action in July 1977 the defendant-appellant was proved to be the tenant of premises 250/1/1, which was occupied by his sister and brother-in-law, till October 1977 is a further circumstances that supports the plaintiff-respondent's contention. Another matter for consideration is that while the plaintiff-respondent was paying Rs. 850/- for the house he was occupying he was receiving only Rs. 400/- as rent from the defendant-appellant for his own house. The learned District Judge was therefore correct when he held in favour of the plaintiff-respondent on this aspect in answering issue No. 1.

In the case of *Gunasena v. Sangaralingam Pillai & Co.*,[5] the Supreme Court held that the concept of reasonableness connoted a relative notion and laid down the principle that in determining this issue, the court must take into account the position of the landlord as well as the tenant together with any other factor which is relevant to a decision of the case. This aspect had also received the District Judge's consideration.

It is significant that in the Rent Act. No. 7 of 1972, Section 22(6) had altered the law by providing that **if the premises are required by the landlord on the ground of reasonable requirement** either for himself or any member of his family then one year's notice in writing of the termination of tenancy shall be given by the landlord to the tenant. This new provision thus gave the tenant a period of one year to find out alternative accommodation and was a condition precedent to the institution of the action. The notice P3 was sent on the 18th May of 1976 and there does not appear to have been a repudiation of the claim made in that letter. The defendant-appellant in his evidence denied he received this notice. The Registered Postal Article Delivery Receipt was produced marked P3A to prove that the letter was posted on 18.5.76 addressed to the defendant-appellant.

On this evidence the District Judge held that the notice had been given and duly served on the defendant-appellant. The defendant-appellant having received this notice had made no endeavour whatsoever to look out for alternative premises. His evidence on this point is at the tail-end of his evidence in re-examination, "I have no other house to shift. I have tried to get a house but I am finding it difficult. After this action was filed I just inquired for few houses. I find it difficult. I do not have an ancestral house". In view of this new provision in the Law and in keeping with the criteria established under the Rent Restriction Act in the numerous decided cases, where a landlord wants the premises for his own occupation and the tenant has made no serious effort to secure other accommodation or to retain other accommodation which might have or had been available, a court called upon to form an opinion as to reasonableness will be justified in granting a landlord a decree for ejectment. In my view, the requirement of one year's notice thus provided relieved to some extent a burden that may have been laid on a landlord.

At the argument of the appeal much stress was made in regard to the comparative means of the landlord and of the tenant but no issue was framed on this matter at the trial, but some questions were asked at random and certain answers elicited. It would appear from an examination of the entirety of the evidence that at the trial that none of the parties paid much importance to this aspect of the matter. Considering the evidence as a whole the court had considered the financial position of the plaintiff-respondent after retirement and the fact that he had three dependent children to maintain and come to the conclusion that the plaintiff-respondent could ill afford to pay Rs. 850/- per month as rent for the house he was now occupying.

In regard to the *bona fides* of the plaintiff-respondent, it is in evidence that he had verbally and in writing (P1) offered to arrange for the defendant-appellant the tenancy of the premises he was occupying, but the defendant-appellant was not agreeable. The defendant-appellant did not even deny this assertion by the plaintiff-respondent.

Considering all the factors proved in this case, we see no reason to interfere with the finding on facts of the learned District Judge. We accordingly affirm the judgment. The appeal is dismissed with costs.

RANASINGHE, J. – I agree.

Appeal dismissed.