JAYAWARDANE
v.
YASALIN NONA

COURT OF APPEAL
WEERASEKERA, J.,
WIGNESWARAN, J.
C.A. 538/87(F)
D.C. MT. LAVINIA 1074/RE
JANUARY 20, 1997

Rent Act, 7 of 1972 – Sections 22(1A) and 22(1) (bb) – Landlord – Failure to aver that plaintiff did not own more than one house – Notice to Commissioner of National Housing – Is it Imperative – Is it a question of fact – Life interest holder – Could he maintain an action on the basis of reasonable requirement? – Questions of law raised for the first time in appeal.

The plaintiff-respondent instituted action seeking an order for ejectment in terms of S.22(1) (bb) of the Rent Act. The defendant-appellant denied the calim that the premises were reasonably required for the use of the plaintiff respondent and stated that the action could not be maintained as the plaintiff-respondent was the owner of more than one house. The District Court gave judgment in favour of the plaintiff-respondent.

At the appeal three questions of law were raised for the first time –

(i) that the action was bad in law and the validity vitiated by the failure to aver in the plaint that she did not own more than one house.

(ii) the plaintiff-respondent had failed to furnish the required notice to the Commissioner of National Housing prior to instituting action, which failure also vitiated the validity of the action.

(iii) that as the plaintiff-respondent had only a life interest she could not maintain an action on the basis of reasonable requirement.

Held:

(i) The Sinhala pleadings of the plaint cannot give any other meaning than that the plaintiff owns not more than one house. Even if one finds the language academically and gramatically wanting there is no doubt as to what the plaintiff-respondent understood it to mean.

***Per* Weerasekera J.,**

"Even if one were to concede the argument of the defendant-appellant this is a clear instance where the maxim *"Falsa demonstratio Non Nocet"* is applicable".

(ii) The plaint discloses an averment that the notice of action had been served on the Commissioner, even if one were to concede that such notice should have been given prior to the action being filed in order to facilitate its maintainability. It is a question of fact to be ascertained on the evidence as to whether the Notice in fact was given though so averred in the plaint. This question was placed before court and the affirmative answer precludes the defendant-appellant as an after-thought to urge this as a question of law.

(iii) At the trial Tenancy was admitted; therefore it can be inferred that he was therefore the landlord.

The plaintiff-respondent claimed that he became the landlord on the basis of being a life interest holder.

The question in issue was whether the landlord was an owner of not more than one residential premises which simply meant whether the landlord owned any house or more than one house. **A life interest holder who is the landlord is entitled to maintain an action for ejectment even though he or she may not be the owner of the premises in suit but only the landlord.**

APPEAL from the judgment of the District Court of Mount Lavinia.

Cases referred to:

1. *Sulaiman v. Abubaker* – 1992 1 SLR 314
2. *Moulana v. Arunasalam* – 1988 1 CALR part 2-15

Faiz Musthapa, P.C. with *Sanjeewa Jayawardena* for defendant-appellant

Rohan Sahabandu for plaintiff-respondent.

Cur. adv. vult.

January 20, 1997.

WEERASEKERA J.

The plaintiff-respondent instituted this action against the defendant-appellant seeking an order for ejectment from the premises in terms of Section 22(1) (bb) of the Rent Act, 7 of 1972 as amended.

The defendant-appellant denied the plaintiff-respondent's claim that the premises were reasonably required for the use of the plaintiff-respondent and stated that the action could not be maintained as the plaintiff-respondent was the owner of more than one house.

The learned District Judge of Mt. Lavinia up held the plaintiff-respondent's claim by his judgment dated 27.11.87. This appeal by the defendant-appellant is from that judgment.

At this appeal President's Counsel urged certain propositions of law on behalf of the defendant-appellant. This was objected to by the Counsel for the plaintiff-respondent as not having been urged in the petition of appeal, and taken up for the first time before this forum. It is now accepted law that it can be so done for many reasons and in my view is for the special reason in that no person shall be dissatisfied having urged for justice unless a full and fair hearing was given to him. I therefore propose to examine the three questions of law that were urged on behalf of the defendant-appellant.

The three questions of law as formulated by the Counsel for the defendant-appellant are as follows:-

1. The action filed by the plaintiff-respondent in the District Court was bad in law and the validity thereof vitiated by her failure to aver in the plaint that she did not own more than one house.

2. The plaintiff-respondent had failed to furnish the required notice to the Commissioner of National Housing prior to instituting action against the defendant-appellant which failure also vitiated the validity of the action.

3. In any event the plaintiff-respondent had only a life interest and therefore could not maintain an action on the basis of reasonable requirement.

I propose to consider proposition of law No. 3 first.

In the pleadings the plaintiff-respondent alleged that she was the landlord and the defendant-appellant was the tenant. At the trial tenancy was admitted. It can be safely inferred that the plaintiff-respondent was therefore the landlord. The plaintiff-respondent claimed that he became the landlord on the basis of being a life Interest Holder.

Section 22(1A) of the Rent Act, No. 7 of 72 as amended reads as follows:-

Section 22(1A):-

"Notwithstanding anything in subsection 1, the landlord of any premises referred to in paragraph (bb) of that sub-section shall

not be entitled to institute any action or proceedings for the ejectment of the tenant of such premises on the ground that such premises are required for occupation as a residence for himself or any member of his family if such landlord is the owner of more than one residential premises and ...".

What is conceived of in that section is the filing of an action by the 'Landlord'. The word landlord has been qualified to mean a landlord who is not an owner of more than one residential premises". The word 'Landlord' has been defined in the Act as follows:-

"Landlord in relation to any premises means the person for the time being entitled to receive the rent of such premises and includes any tenant who let premises or any part thereof to any sub-tenant"

In this instance therefore on the admitted facts the plaintiff-respondent is the landlord and a person permitted by Section 21(1A) to be entitled to maintain an action subject of course the bar contained therein namely that such landlord should own no house or own not more than one residential premises. It is presumable on a correct application of the legal position the defendant-appellant was advised to raise issue No. 6 at the time which read as follows:- Is the plaintiff the owner of more than one residential premises. The answer to it was in the negative. This adjudication on the facts have not been sought to be assailed in appeal. The ownership of the premises in suit was not the determinable question of being a bar to the maintainability of the action. The question in issue was whether the landlord was an owner of not more than one residential premises which simply meant whether the landlord owned any house or more than one house. A life interest holder who is the landlord, is therefore entitled to maintain an action for ejectment even though he or she may not be the owner of the premises in suit but only the landlord. **I am supported in my thinking by the descion in the case *Sulaiman v. Abubaker*[1] and the decision in the case *Moulana v. Arunasalam*[2].**

I am therefore of the view that the plaintiff-appellant who was admittedly the landlord though a life interest holder is entitled to maintain this action.

In regard to the first question urged on behalf of the defendant-appellant the Sinhala version of the plaint in para 6 (ඇ) avers as follows:- "පැමිණිලිකරුට එක වාසස්ථානයකට වඩා වාසස්ථාන නැත"

It was urged by the Counsel for defendant-appellant that the averment in order to comply with settled law should read as follows:- " මෙම නිවසට අමතරව වෙනත් නිවසක අයිතියක් නොමැත. "

I do accept the legal proposition that in order to invoke the provisions of Section 22(1A) of the Rent Act, No. 7 of 1972 two essential requisites should be possessed by the person seeking relief. That is, (i) that the person claiming relief should be the landlord who owns no house or not more than one residential house and (ii) has caused notice of the action to be served on the Commissioner of National Housing. These two matters therefore have to be pleaded.

In this action the Sinhala pleadings in paragraph 6 (ඇ) of the plaint cannot give any other meaning than that the plaintiff owns not more than one house. This is complying with one part of the legal requirement. Even if one finds the language academically and grammatically wanting I have no doubt as to what the plaintiff-respondent understood it to mean. In any event no issue on this question was raised at the trial. By issue No. 6 the only question raised was whether the plaintiff-respondent was the owner of more than one house. The English translation of the plaint dated May 85 clearly avers in para 6(d) that – "The plaintiff does not own more than one residential premises". Even if one were to concede the argument of the defendant-appellant this is a clear instance where the Maxim *"Falsa demonstratio non nocet"* (A false description does not vitiate a document) is applicable and the plaintiff-respondent is entitled to be considered to have complied with the requisite rule of pleading by para 6 (ඇ) in the Sinhala plaint and para 6(d) of the English translation.

For these reasons I am of the view that para 6(ඇ) of the Sinhala plaint and para 6(d) of the English translation are satisfactory compliance with the law and the plaintiff-respondent was entitled to file and maintain this action.

With regard to the second question argued on behalf of the defendant-appellant regarding notice to the Commissioner of

National Housing I find that issue 3 had in fact been suggested and after evidence and careful evaluation decided in favour of the plaintiff-respondent. It has not been urged that this finding is not justified. I am of the view that this finding to issue 3 which is based on the proper evaluation of the documents and evidence is a correct conclusion. On this aspect the plaint discloses an averment that the notice of action had been served on the Commissioner of National Housing. What I understand the defendant-appellant to urge is that the notice had not been in actual fact been given prior to the institution of the action and therefore bad in law. Even if I were to concede that such notice should have been given prior to the action being filed in order to facilitate its maintainability, I am of the view that it is a question of fact to be ascertained the evidence as to whether notice was in fact given though so averred in the plaint. This question was placed before Court by issue No. 3 and the affirmative answer in my view now precludes the defendant-appellant as an afterthought to urge this as a question of law.

For these reasons I am of the opinion that there is no merit in the three propositions of law that have been urged by the defendant-appellant.

I do not propose to interfere with the judgment of the learned District Judge except to comment that I am satisfied that he has addressed his mind to questions placed before him and decided correctly in favour of the plaintiff-respondent.

The appeal is dismissed with taxed costs payable by the appellant to the respondent.

WIGNESWARAN, J. – I agree.

Appeal dismissed.