

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an Appeal with Special
Leave to Appeal granted by Supreme
Court under Article 128(2) of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

S.C. Appeal No. 11/2004

S.C. Spl. LA No. 309/2003
C.A. Appeal No. 91/92(F)
DC. Colombo No. 7503/RE

Mrs. D. Jayasekera
(nee D.H. Hapangama)
No. 1242, Welikada,
Rajagiriya.

Plaintiff
Vs.

Mrs. Eslin Wimalaratne
No. 30/3, Gothami Road,
Borella,
Colombo 08.

And

Mrs. D. Jayasekera
(nee D.H. Hapangama)
No. 1242, Welikada,
Rajagiriya.

Plaintiff-Appellant
Vs.

Mrs. Eslin Wimalaratne
No. 30/3, Gothami Road,
Borella,
Colombo 08.

Defendant-Respondent
(deceased)

And

Miss I.S. Wimalaratne
No. 30/3, Gothami Road,
Borella,
Colombo 08.

**Substituted Defendant-
Respondent**

And

Mrs. Eslin Wimalaratne
No. 30/3, Gothami Road,
Borella,
Colombo 08.
(deceased)

Miss I.S. Wimalaratne
No. 30/3, Gothami Road,
Borella,
Colombo 08.

**Substituted Defendant-
Respondent-Appellant**

Vs.

Mrs. D. Jayasekera
(nee D.H. Hapangama)
No. 1242, Welikada,
Rajagiriya.

Plaintiff-Appellant-Respondent

BEFORE : **Eva Wanasundera, PC. J**
Buwaneka Aluwihare, PC.J. &
Anil Gooneratne, J.

COUNSEL : Romesh de Silva, PC. with Geethaka Gunawardane for the Defendant-Respondent-Appellant.
Manohara de Silva, PC. for the Plaintiff-Appellant-Respondent.

ARGUED ON : **17.09.2015**

DECIDED ON : **08.12.2015**

EVA WANASUNDERA, PC.J.

Special leave to Appeal was granted on the following questions of law against the judgment of the Court of Appeal dated 14.10.2003. They are as follows:-

1. Is the said judgment contrary to law and against the evidence adduced in the case?
2. Did their Lordships err in fact and in law in concluding that the trial judge has come to a finding that the Defendant Respondent had come into occupation of the premises in suit after the Rent Act came into operation in March, 1972, when in fact, the finding of the trial judge was to the contrary?
3. Did their Lordships fail to appreciate the submission that even though the Defendant has admitted receipt of a notice to quit, but had denied the receipt of the notice to quit marked as P2 specially in view of the fact that the copy of the purported notice to quit had no date, and the lawyer in question was not called to give evidence to establish that such notice to quit was in fact sent on that day as pleaded in the case?
4. Did their Lordships err in law analyzing the provisions contained in Sec.22(7) of the Rent Act and particularly in respect of the occupation contemplated under the said provision? And thus did their Lordships err in law in holding that the occupation referred to under Sec. 22(7) of the Rent Act is the occupation as a tenant when for the purposes of the ' specified date ' the occupation could also mean the occupation under a tenant at the time?
5. Have their Lordships failed to analyse the provisions contained in Sec. 18 of the Rent Restriction Act and also failed to properly analyse the evidence adduced as to the succession to the tenancy by the defendant in spite of many documents been produced to court?
6. Have their Lordships erred in law in holding that as a result of attorning to the Plaintiff by the Defendant in 1988, for the purposes of Sec. 22(7) the 'specified date' is the date of attorment in 1988.

7. Did their Lordships err in fact and in law holding that the evidence of the Plaintiff with regard to the reasonable requirement had not been challenged when there was evidence to the contrary given by the Defendant and upon which written submissions were also tendered by the Defendant to the District Court?
8. Have their Lordships erred in fact and in law in deciding the issues of reasonable requirement when the District Court had not answered the said issues and thus, if at all, on the reasonable requirement this case ought to have been sent to the District Court to try the said issues?

I feel that it is necessary to have a look at the background of the facts. The facts can be narrated this way. The Plaintiff Appellant Respondent (hereinafter referred to as the Plaintiff) instituted action in the District Court of Colombo to eject the Defendant Respondent Appellant (hereinafter referred to as the Defendant) from premises No. 30/3, Gothami Road, Borella **on the ground that the Plaintiff reasonably required the premises for occupation by the Plaintiff.**

The Defendant filed answer stating that her husband came into occupation of the house with her in 1942 under the grandfather of the Plaintiff as the land lord. Her husband was the tenant. The husband of the Defendant died on 02.01.1967. Then she became the legal tenant of the said grandfather of the Plaintiff, namely Pawlis Appuhamy. She paid the rent of Rs. 81. 47; the house is subject to the Rent Act No. 7 of 1972.; she did not get the notice to quit dated 30.11.1988 and that the Plaintiff is unable to have and maintain the action in accordance with Sec.22(7) of the Rent Act.

Section 22(7) reads as follows:

“No action shall be instituted for the ejectment of the tenant on the ground that the premises **are reasonably required**, where the ownership of such premises was acquired by the land lord, 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.**”

Specified date has been defined as follows:

“ 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 Sec. 36 of this Act or Sec. 18 of the Rent Act, came into occupation of the premises.”

The dates of the events relevant to this matter can be identified as follows:-

1. The Plaintiff became the present owner of the premises on 25.02.1987 by deed No. 4238 which was a gift from her mother who received it from her husband as a gift on 02.11.1945.
2. The Defendant came into physical occupation of the premises with her husband who was the first tenant in 1942, as per the Defendant.
3. The first tenant who was the present Defendant's husband died on 02.01.1967.
4. The Defendant had then attorned to the Plaintiff's mother according to letters V3 dated 7.1.1967 and V4 dated 17.01.1967.

The District Judge who heard the trial dismissed the Plaintiff's action on the basis that Sec. 22(7) of the Rent Act is a bar for the Plaintiff to file action against the Defendant. The trial judge did not consider and added that he need not consider whether the premises were needed by the Plaintiff on "reasonable requirement" when he had decided to dismiss the Plaintiff's action in accordance with Sec. 22(7) of the Rent Act.

The Court of Appeal judges over turned the District Court decision and granted judgment in favour of the Plaintiff as prayed for in the plaint. They considered reasonable requirement which the District Judge specifically refused to consider and did not consider. The District Judge had delivered judgement only on the basis that Sec.22 (7) of the Rent Act was a bar to the filing of the action.

An analysis should be done of Sec.22 (7) relating to the facts of the present case since it has become necessary. According to this section, action cannot be filed to eject a tenant by a land lord if he or his predecessor became the owner of the premises after the 'specified date' by way of a gift from a parent who acquired

ownership on a date prior to the 'specified date'. The specified date can be reckoned as the date on which the present tenant or his predecessor who died came into occupation of the premises.

In the present case, the Plaintiff became the owner on 25.02.1987. Her mother became the owner on 02.11.1945. The present tenant became the tenant on 02.01.1967. The present tenant's husband had become the tenant in 1942.

I view the Rent Act as an Act containing provisions to protect the poor tenants who in the year 1972 and before, had been paying a rental of less than Rs.100. Over four decades have passed since then. As of today, the poorest of the poor who live in small houses on rent must be paying much more than Rs. 100 per month. The times have changed but the Rent Act is valid law and the provisions have to be interpreted by courts in a meaningful way.

If I may quote Lord Denning in Magor and St. Nallons R.D.C. Vs Newport Corporation (1950) 2 AER 1226,1236 C.A., he said thus;

" We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do and it is a thing to which lawyers are too often prone. We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in gaps and making sense of the enactment than by opening it up to destructive analysis "

Sec.22 (7) of the Rent Act contemplated on the poor tenants being ousted from their poorly built small houses, in an unjustifiable manner. The law did not give a chance for the land lord to sell the premises to another over the head of the tenant. The law did not want to give a chance to the land lord to gift it to someone else and let that person evict the tenant. That is why the law provided for a specified date which meant the date on which the tenant came into occupation. If someone became the owner of the premises after the tenant came into occupation, he was not allowed to file action soon after he became the owner and evict the tenant. If the tenant died, the land lord was not allowed to

chase out those who were holding under the former tenant at once. The tenant's children and spouse were protected.

What is the scenario when the tenant attorns to the new owner according to law or even if it is not proper attornment, when the parties agree and act as land lord and tenant? What is the position if the parties agree for a new rental and carry on the relationship of land lord and tenant smoothly? Then, does the land lord have a right to request the premises on reasonable requirement by giving one year's notice under the Rent Act and if it is not given, can the land lord file action to evict him? Or could it be the position in law that some land lords cannot ever file action to evict the tenant according to Sec. 22(7)?

I am of the opinion that the law should not be interpreted to mean that the land lord has to give up on his right and title to own the land. The Rent Act was brought in, only to protect the tenants and for no other reason. The limits have to be decided according to the circumstances but not to reach an absurdity.

In the present case, no notice was sent to the Commissioner of National Housing which was a requirement in law before filing action. It was an admitted fact but the parties did not contest the case on that point. The parties went to trial on other matters quite rightly and quite reasonably.

The Plaintiff gave notice under Sec.22 (1)(b) allegedly on 30.11.1988 terminating the tenancy and requesting the Defendant to hand over vacant possession of the premises on 31.12.1989. The notice did not bear a date on it but the delivery under registered cover was proven with official witnesses in court. The District Judge had disregarded this evidence of delivery and harped on the point that the letter of notice did not have a written date on it. Action was filed on 28.06.1990 which date falls one and a half years later than the date such notice was sent. I am of the opinion that the said notice can be regarded as adequate compliance of the provisions of law contained in Sec. 22(1) (b).

Both parties, the Plaintiff and the Defendant have put forward different arguments with regard to the meaning of 'the specified date' in Sec.22(7). I

would like to analyse it in this way. The land lord Pawlis Appuhamy rented out the house to Mr. Wimalaratne. Pawlis Appuhamy gifted the house to his wife in 1945. He then died and Mr. Wimalaratne attorned to his wife as her tenant. Thereafter Mr. Wimalaratne died in 1967 and his wife, Eslin Wimalaratne attorned to Pawlis Appuhamy's wife, Mrs. W.R. Hapangama. In 1987 Mrs. Hapangama gifted the house and property to the Plaintiff, their daughter, Mrs. D. Jayasekera. Then Eslin Wimalaratne attorned to her as the land lord. Since then the Plaintiff was the land lord and the Defendant was the tenant. The monthly rental of Rs. 81.47 was continuously paid by money orders to each of the land lords by the tenants at all times from the year 1942 as alleged by the Defendant up to the year 1990, i.e. for 48 years. The evidence was that the Defendant has a son who is married and away but there were two unmarried daughters living with the Defendant at the time the case was filed. She gave evidence and said that the monthly income was Rs. 5500 but she does not want to leave the place because it was convenient to be there for her needs as well as she could not afford another house with that income of the household. Comparison of an income of Rs 5500 a month and Rs. 81.47 paid as rent seems to be very much profitable to the tenant on the Defendant's own evidence.

The Plaintiff's evidence was that she owns no other houses; she was pregnant; she had a miscarriage because she was living on rent on an upstairs of a house and had to climb up and down all the time; doctors have advised her to be on the ground floor if possible and this house which is owned by her and given on rent to the Defendant is a single storeyed house and as such she reasonably requires it for her occupation. These facts were not contested. The balance of probabilities seem to weigh more towards the land lord's side.

I am of the opinion that the clause 'came into occupation' of the premises contained in the interpretation of 'specified date' in Sec. 22(7) of the Rent Act should mean nothing but the date the tenant became a tenant of the specific land lord. At different times the tenant attorns to the different land lords when the ownership passes from one person to the other. It cannot be interpreted to mean the physical occupation of the tenant in the same premises because it leads to an absurdity. For example, if the first tenant is the father and a child is born to him

who later attorns as a tenant to the owner's child when they are both adults, it cannot be interpreted to say that the tenant came into occupation at the time when he was a child. The judicial interpretations given in the cases of Hameed V Cassim (1996) 2 SLR 30 and W.B.C. Senerath Nandadeva v Z.N. Gulamhussein - Bar Association Law Journal Reports (1994) Vol. V part 11 page 12 should be followed. The judges in those cases said that "the date on which the tenant for the time being came into **occupation qua tenant. It is not the physical occupation by the tenant but the date on which he became the tenant of the land lord at that time.**

I would like to state that each time that a tenant attorns to a new land lord there is a new tenancy agreement between that particular land lord and that particular tenant which must be understood for proper interpretation of the provisions of the Rent Act.

Accordingly I answer the questions of law mentioned above, in favour of the Plaintiff Appellant Respondent who filed action to eject the tenant as Plaintiff in the District Court of Colombo. I dismiss the argument that Sec. 22(7) is a bar for the Plaintiff to file action against the Defendant. I am of the view that the Plaintiff had filed action after giving proper notice requiring reasonable occupation for the Plaintiff which was proven by the Plaintiff without a contest.

This Appeal is dismissed. I affirm the judgement of the Court of Appeal. However I order no costs.

Judge of the Supreme Court

Buwaneka Aluwihare, PC.J.
I agree.

Judge of the Supreme Court

Anil Goonaratne .J.
I agree.

Judge of the Supreme Court

