SRI RAM Ltd. v MAHTANI

Supreme Court
Unsworth, C.J.
19 August 1976

Landlord and tenant — service of notice to quit.
Landlord and tenant — action for possession — harsh or oppressive — exceptional hardship — relatively greater hardship — Landlord and Tenant (Miscellaneous Provisions) Ordinance, s. 3.
Jurisdiction — whether Supreme Court has jurisdiction to apply s. 3 of the Landlord and Tenant (Miscellaneous Provisions) Ordinance.

The landlord (plaintiff) purported to serve a notice to quit by pushing it through a slit in the door of the suit premises. The tenant (defendant) gave evidence that he never received it. In an action for possession it was argued on his behalf that notice had not validly been given. In the alternative, it was argued that this was a case where relief should be given under s. 3 of the Landlord and Tenant (Miscellaneous Provisions) Ordinance (Cap. 83, 1965-69 Ed.). The court considered whether it had jurisdiction to give such relief.

Held: (i) The notice to quit was invalid.

(ii) The Supreme Court has jurisdiction to give relief under s. 3 of the Ordinance.

(iii) Had a valid notice been given, the court would have given relief only to the extent of postponing the date for possession.

Note. In *Sri Ram Ltd. v Mahtani*, (No. 2), reported at p. 352 infra, it was held that s. 3 could not be invoked in the Supreme Court.

Case referred to in the judgment.

Doe d. Buross v Lucas, (E. & E. Dig. 1973 Reissue, Vol. 31 (2), p. 781, para. 6483).

Action

This was an action for possession of a flat to which Part II of the Landlord and Tenant (Miscellaneous Provisions) Ordinance did not apply.

H.K. Budhrani for the plaintiff.
P.J. Isola for the defendant.

13 September 1976: The following judgment was read—

The plaintiff in this case claims possession of Flat 27, Trafalgar House. The defendant pleads first that no valid notice to quit has been served and secondly asks for relief under s. 3 of the Landlord and Tenant (Miscellaneous Provisions) Ordinance.

I will deal first with the question of whether there has been any valid notice to quit. The facts relating to this, as I find them, are that on 29 January 1975 a notice to terminate the tenancy on 28 February 1975 was served. It was later discovered that this notice was ineffective, as cl. 4 (1) of the tenancy agreement requires that not less than 3 months notice must be given to terminate the tenancy. In consequence of this it was necessary for a further notice to be served. In order to avoid any further delay a member of the firm of solicitors acting for the plaintiff went to Flat 27 on Sunday 31 August and pushed a notice addressed to the defendant through a slit in the door. There is no box below the slit and the envelope containing the notice fell to the ground. Mr. Serfaty who was the solicitor serving the notice heard someone in the flat but does not know if the defendant ever got the notice. The defendant was in fact out of the flat at the time and did not return until the evening. In his evidence the defendant says that he never received the notice and I accept his evidence on this point.

The law relating to the service of a notice to quit is to be found in the cases referred to in Woodfall on Landlord and Tenant 27th edition vol.I at para. 2011. The paragraph reads as follows:—

> "SERVICE ON THE TENANT. A notice to quit *need not be served personally* on the tenant. It is sufficient to leave it at his dwelling-house with his wife or servant. Such service is sufficient although the notice does not actually reach the tenant's (or landlord's) hands before the half-year has commenced. But merely leaving the notice at the tenant's house without any explanation, and without proof that the person to whom it was delivered was the tenant's wife or servant, or that it ever came to his hands, is not sufficient. So service on the tenant's wife, off the demised premises and without proof that it was at her husband's residence, where she was then living with him, appears to be insufficient. Service of the notice upon a relative of the *sub-tenant* upon the premises is not sufficient, although the notice was properly addressed to the tenant. Putting the notice under the door of a tenant's house, or any other mode of service, has been said to be sufficient, if it be shown that the notice came to the tenant's hands before the commencement of the six months, and it was held that it was sufficient to serve the notice upon a person whose duty it was to deliver it to the tenant. The notice may be served on a Sunday."

I have considered the facts in the light of the law referred to above and, in particular, the case of *Doe d. Buross v Lucas*[1] where it was held that the mere leaving of a notice to quit at the tenant's home without further proof of its being delivered to a servant and explained or that it came to the tenant's hands, is not sufficient to support an ejectment. The conclusion which I have reached is that there was no valid notice to quit.

In case another court may form a different view, I propose to deal with the second point, namely, whether this is a case in which some relief should be granted under s. 3 of the Ordinance.

The facts, as I find them, relating to this second point are these: in 1966 the defendant was occupying a flat on the 4th floor in Irish Town under the tenancy of Mr. Louis Francis. He found the flat unsuitable as both he and his wife suffer from cardiac trouble and it was a strain climbing up to the 4th floor. In these circumstances, the doctor advised him to get a lower level flat. In October of the year 1966, the defendant heard that his landlord had a vacant flat on the 1st floor (or the 2nd floor on the West side) at Trafalgar House. This is flat No. 27. It has 4 bedrooms and provides accommodation for the defendant and his wife and his son and daughter-in-law and 2 children. The doctor has advised that somebody should be living with the defendant and his wife in view of the cardiac trouble. The defendant approached Mr. Francis who offered him the lease of the flat and assured him that as long as he paid the rent he would not be moved or disturbed in the occupancy of the flat. The lease of 14 July 1966 was then signed. In 1972 the landlord (Mr. Francis) agreed to dispose of his interest in this flat (together with 5 other flats and 2 shops) to the present plaintiff company and in pursuance of the agreement Mr. Francis demised the property on 12 March 1974 for the unexpired term of the lease less one day, to the

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[1] E. & E. Dig. 1973 Reissue, Vol. 31(2), p. 781, para. 6483.

plaintiff company which then became the defendant's landlord in the place of Mr. Francis. In January of 1975 the new landlords commenced proceedings to terminate the lease and either shortly before or after the commencement of the proceedings, negotiations took place with a view to the defendant either purchasing the flat or continuing in occupation at an increased rental. No agreement was reached. The company have accordingly continued these proceedings and say they require the flat for occupation by one of their directors (Mr. Budhrani) who suffers from asthma and needs a first floor flat.

These are the facts. The flat is not a controlled tenancy under Part II of the Ordinance but the defendant asks for relief under s. 3 of Part I of the Ordinance which reads as follows:—

> "3. (1) If proceedings are taken against a tenant of a dwelling-house for the recovery of possession of the dwelling-house or for the ejectment of the tenant, should it appear to the court that the proceedings are harsh or oppressive or that exceptional hardship would be caused to the tenant by the making or giving of an order or judgment for possession or ejectment, the court may refuse to make or give such an order or judgment or may adjourn the application for or stay or suspend execution of any such order or judgment or postpone the date of possession for such period or periods, and subject to such conditions as it thinks proper, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.
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> (2) . . . . .
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> (3) The court shall not exercise any of the powers given to it under the foregoing provisions of this section in any case where it is satisfied that greater hardship would be caused to the landlord by the exercise of the power than would be caused to the tenant by the refusal to exercise it.
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> (4) . . . . .
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> (5) . . . . ."

The section is based on s. 12 of the English Rent and Mortgage Interest Restriction Act, 1923. The English section was a transitional provision to deal with the position on the intended expiry of the increase of Rent and Mortgage Interest (Restriction) Act, 1920 on 24 June 1925. In fact, the transitional provision became unnecessary as the 1920 Act was extended by a subsequent Act in 1925. This section was later repealed by the Rent and Mortgage Interest (Restriction) (Amendment) Act, 1933. A provision based on the repealed English section was, however, included as s. 4 in the Gibraltar Rent Restriction Ordinance, 1938 and later continued as s. 3 in the present Ordinance. In view of the history of the English section there are no English authorities to assist in the construction and application of the Gibraltar section. I think, however, that I must construe the section in accordance with its ordinary meaning and apply it as a restriction which the legislature has imposed on the right to possession in certain cases.

The first point for consideration is whether the Supreme Court has jurisdiction under s. 3 as "court" is defined in s. 2 as meaning "the Court of First Instance". The definition is, however, subject to the qualification

that it does not apply in cases where the context otherwise requires. In my view, s. 3 is a case where the context otherwise requires as the section applies to any proceedings for possession and such proceedings can be brought in the Supreme Court as well as the Court of First Instance. I accordingly hold that the Supreme Court has jurisdiction to grant relief under s. 3.

Now, should relief be granted? There are 3 questions which arise for decision under this point. Are these proceedings harsh and oppressive? Will exceptional hardship be caused to the defendant by the making of the order for possession? If the answer to either of these questions is in the affirmative, will greater hardship be caused to the plaintiff landlord by the grant of relief than would be caused to the tenant by the refusal of the relief?

It was submitted that the plaintiff landlord acted harshly and oppressively in the hasty way in which the plaintiff company has sought to regain possession in circumstances in which the company is making a very substantial financial gain. In my view, this is not sufficient to constitute harsh and oppressive conduct. And, in all the circumstances, I do not think that the plaintiff's conduct was harsh or oppressive.

The alternative submission was that exceptional hardship would be caused to the defendant by granting possession. I do not think that the grant of possession itself would be sufficient to constitute exceptional hardship and I do not think that I should create some sort of controlled tenancy in respect of this flat. At the same time, I do feel that there is exceptional hardship in the time in which the defendant is being required to find a new home. It is hardship in that a suitable type of home has to be found, having regard to the medical evidence and the circumstances are exceptional in view of the unusual assurance which was given by the previous landlord.

The next point for consideration is whether greater hardship will be caused to the landlord by the grant of relief than would be caused to the defendant by its refusal? There is certainly no real financial hardship as it is apparent that the project which the landlord has undertaken at Trafalgar House is likely to prove successful and I do not think that the plaintiff company (and it is to the company that I must look) will suffer a greater hardship than the defendant on account of a delay in obtaining possession of the flat for one of its directors even if he suffers from asthma.

In the circumstances mentioned above I would (if a proper notice had been given) have granted relief by postponing the date for possession for a further 9 months from the date of the order on condition that a rent of £55 per month was paid during that period.