SRI RAM Ltd. v MAHTANI (No. 2)

Supreme Court
Spry, C.J.
20 May 1977.

Landlord and tenant — exceptional hardship — whether relief afforded by s. 3 of the Landlord and Tenant (Miscellaneous Provisions) Ordinance available in proceedings in the Supreme Court.

Section 3 of the Landlord and Tenant (Miscellaneous Provisions) Ordinance (Cap. 83, 1965-69 Ed.) applies only to proceedings in the Court of First Instance.

Cases referred to in the judgment.

Centaploy Ltd. v Matlodge Ltd., [1974] Ch. 1.
Abrines v Stagnetto, Unreported.
Sri Ram Ltd. v Mahtani, supra, p. 334.
George Wimpey & Co. Ltd. v British Overseas Airways Corpn., [1955] A.C. 169.

Action

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

A.B. Serfaty for the plaintiff.
P.J. Isola for the defendant.

27 May 1977: The following judgment was read—

In this action the plaintiff company seeks an order for possession of a flat known as No. 27 Trafalgar House, arrears of rent and mesne profits. During the course of the hearing, payment of the arrears was tendered and accepted, so no issue regarding it is subsisting.

As regards the issue of possession, it is admitted that notice to quit was duly served. It is also conceded that Part II of the Landlord and Tenant (Miscellaneous Provisions) Ordinance (to which I shall refer as Cap. 83) has no application.

The defence falls into two parts. First, it is alleged that the predecessor of the plaintiff company, when granting the tenancy, gave the defendant an assurance that so long as he paid the rent promptly and observed the conditions contained in the tenancy agreement, he would not be disturbed and that this assurance amounted to a condition precedent.

I have no hesitation in rejecting this part of the defence. Mr. Serfaty for the plaintiff company, argued, relying on *Centaploy Ltd. v Matlodge Ltd.* [1], that such an assurance would be repugnant to a periodical tenancy. I think there is merit in that argument. In any case, I think it is clear from the defendant's own evidence that the assurance was never intended nor understood to create a legal obligation. The defendant said that the assurance was given both before and after the signing of the agreement and added that the former landlord "never gave notice to anyone". I think this was clearly an expression of benevolence and nothing more.

The second part of the defence presents much more difficulty. The defendant, relying on s. 3 of Cap. 83, claims relief on the ground that the conduct of the plaintiff is harsh and oppressive or in the alternative that it would result in exceptional hardship. Mr. Serfaty submitted that s. 3 has no application, on the ground that by reason of the definition in s. 2. the relief is one available only in the Court of First Instance.

Section 2, so far as it is relevant, reads—

> "In this Ordinance, unless the context otherwise requires,—
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> > "court" means the Court of First Instance, save that in Part III and in any reference thereto or to any section thereof it shall mean the Supreme Court;".

Mr. Peter Isola, for the defendant, argued that s. 3 is couched in broad terms and that the intention must have been to protect all tenants. He placed his reliance very much on the words "unless the context otherwise requires".

I am not aware of any binding authority on this question. In *Abrines v Stagnetto* [2] Unsworth, C.J., appears to have assumed that the section applied in the Supreme Court, the point not, apparently, having been raised or argued. In *Sri Ram Ltd. v Mahtani* [3], an action between the present parties concerning the same subject-matter, the learned Chief Justice said—

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[1] [1974] Ch. 1.
[2] Unreported.
[3] Supra p. 334.

> "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 in the Court of First Instance. I accordingly hold that the Supreme Court has jurisdiction to grant relief under s. 3"

That decision is not binding on me, both because it is the judgment of a judge of co-ordinate jurisdiction and because it was given obiter, and while, of course, I regard it with the greatest respect, the matter does not appear fully to have been argued before the Chief Justice.

I begin from the standpoint that prima facie "court" in s. 3 means the Court of First Instance. Its meaning can only be extended if the context so requires, and that, as I understand it, means reading the Ordinance as a whole. Having done so, I can find nothing wrong that "requires" a wider meaning to be given to the word. "Require" is itself a word capable of various meanings but in this context I think it must mean more than "permits". I would hold that the context required a different meaning if the definition would make the section meaningless or absurd, or if it led to a contradiction with another section, or if it produced a result contrary to the clear intention of the Ordinance, but in the present case, none of these would arise. It is quite clear that apart from this section the Ordinance only deals with certain limited categories of tenancy and the sections that deal with the recovery by a landlord of possession are all in Part II, in respect of which "court" unquestionably means the Court of First Instance. The protection afforded by that Part is limited to premises below a certain value, so it is not unreasonable to suppose that the Legislature was concerned to protect people of humble means and thought that wealthier tenants were able to look after themselves.

Mr. Isola also argued that the Legislature when creating the Court of First Instance cannot have intended to take away powers from the Supreme Court. In the interpretation of amending statutes there is a general rule that the Legislature is presumed not to have intended any greater change in the law than is clearly expressed. As Lord Reid said in *George Wimpey & Co. Ltd. v British Overseas Airways Corporation* [1]—

> "...if the arguments are fairly evenly balanced, that interpretation should be chosen which involves the least alteration of the existing law".

This calls for an examination of the history of the section, so far as the law of Gibraltar is concerned. The history of the English section from which it was taken affords no help.

The first rent restriction legislation in Gibraltar was the Increase of Rent (Restriction) Ordinance, 1920 (No. 10 of 1920) which was repealed by the Increase of Rent Repeal Ordinance, 1923 (No. 3 of 1923). It is not relevant to the present issue.

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[1] [1955] A.C. 169, at p. 191.

The next enactment was the Rent Restriction Ordinance, 1938 (No. 4 of 1938). This was divided into three Parts, the first containing general provisions, the second containing provisions restricting rents and the third again containing miscellaneous general provisions. Section 2 provided for applications to the Supreme Court in its summary jurisdiction regarding disputes over the sterling value of rents being paid in foreign currency. Part II defined the word "court" for the purposes of that Part as the Supreme Court in its summary jurisdiction. Section 4, contained in Part I, was substantially similar to s. 3 of Cap. 83. There was no definition in or for the section of the word "court", which had therefore, under the Interpretation and General Clauses Ordinance, 1932 (No. 18 of 1932) to be interpreted as any court of competent jurisdiction. There were two amendments in 1945 which are irrelevant to these proceedings.

The Rent Restriction Ordinance, 1938, was repealed and replaced by the Landlord and Tenant (Miscellaneous Provisions) Ordinance, 1959, now Cap. 83. This comprised four Parts, the first preliminary, the second restricting rents, the third giving security of tenure to certain tenants and the fourth general. The first Part contained an interpretation section applying to the whole Ordinance, including a definition of "court" as the Supreme Court in its summary jurisdiction. The second and third Parts also contained interpretation sections applying only to those Parts respectively but neither contained a definition of "court". It seems to me that the position then was that the relief provided by s. 3 was available only in the Supreme Court in its summary jurisdiction; I think it must be assumed that the effect of applying the definition of "court" to the whole Ordinance instead of to a single Part must have been appreciated and intended.

The next significant change was in 1960, when the Court of First Instance was established and the summary jurisdiction of the Supreme Court abolished. Section 55 of the Court of First Instance Ordinance, 1960, (now Cap. 35) provided that all references in other Ordinances to the Supreme Court in its summary jurisdiction were to be construed as referring to the Court of First Instance. All the powers, duties and functions of the court under Cap. 83 then reposed in the Court of First Instance.

Finally, the definition of "court" was, by the Landlord and Tenant (Miscellaneous Provisions) Ordinance, 1962 (No. 3 of 1962), replaced by the present definition, which transferred Part III of the Ordinance to the jurisdiction of the Supreme Court.

When the matter is looked at in its historical sequence, it is, I think, clear that jurisdiction to grant the reliefs contained in s. 3 was expressly conferred on the Court of First Instance in 1960 and preserved when jurisdiction under Part III was transferred to the Supreme Court in 1962. There is no question of the introduction of the present definition derogating in any way from the jurisdiction of the Supreme Court. I accordingly hold that s. 3 cannot properly be invoked in this court.

Mr. Isola conceded that if s. 3 has no application, there is no other basis on which he can seek relief.

(The judgment concludes with an examination of the question whether relief should be granted if there were power to grant it.)