

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1975] SGHC 10

DA 16/1974

Between

Somasundaram
Another

... Appellant

And

Tong Nam Contractors(Pte)
Ltd

... Respondent

GROUND OF DECISION

Landlord and Tenant — Termination of leases

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Somasundaram and Another v Tong Nam Contractors(Pte) Ltd

[1975] SGHC 10

DA 16/1974
A V Winslow J
17 July 1975

1 The first appellant who claimed to be conducting a business known as `Nathan Brothers` at No 67 Bukit Timah Road in partnership with the second appellant, was, after a careful analysis of the evidence and consideration of the pertinent authorities, held by the trial district judge to be in unlawful occupation of the said premises which are owned by the respondents/landlords. The second appellant, after similar considerations, was held to have completely abandoned the statutory tenancy which he possessed from 1958 onwards by failing to remain in possession of the premises with the necessary `animus` long before the present proceedings were instituted in 1972 for recovery of possession thereof from them both. It is not surprising that such a decision was reached when one considers the facts and the near-startling `ploys` adopted to substantiate possession on the part of the statutory tenant as revealed by the evidence.

2 An appellate court does not of course have the advantage which the trial district judge had of seeing, hearing and thereby being better able to assess the credibility of witnesses. There was, however, nothing in the record of evidence which caused me any apprehension that he did not have overwhelming material

on which he could properly arrive at the decision which he reached on the facts. If ever there were facts in a case of this kind which pointed almost inexorably - and not merely by a preponderance of evidence - to one conclusion only, this was such a case.

3 The evidence of PW2, a Director of the respondents, was accepted by the district judge without any reservations. She told a simple, straightforward story contrasted with which the appellants' versions paled into insignificance and were rightly treated with the near-derision which they deserved as revealed by the following penetrating analysis of the factors militating against them:

(a) The signboard of their alleged business known as Nathan Brothers was significantly never exhibited outside the premises after 1958 although those of several other businesses including one, of which the first appellant was sole proprietor, 'Liberty Stores' were so exhibited. Shortly after the issue of the writ, however, all these signboards disappeared and the signboard of 'Nathan Brothers' reappeared outside the premises. PW2 had her office only a few doors away and was able to observe these matters over a long period of time.

(b) No income tax was paid between 1966 to 1973 as the business was said by the first appellant to be operating at a loss since 1966.

(c) The firm's bank account with the Eastern Bank was closed around 1962 and till about October 1973 the firm had no bank account in its name.

(d) Strangely, an account was opened with the Overseas Chinese Banking Corp after the writ was taken out.

(e) The firm ceased to have a telephone from 1967 until August 1973 when an application was made to transfer one under the name of another business back into the firm's name.

(f) The second appellant could give no satisfactory answers as to the earnings of the firm and 'appeared to be totally oblivious of its actual operations, ie if there were any at all'.

4 The district judge accordingly came to the conclusion that: since 1966 or thereabouts the firm of Nathan Brothers, although registered as a `business` with the Registry of Business Names, was not in fact operating at all and had ceased its purported business operations altogether. It was a fictitious firm and the firm-name had obviously been retained and registered by the defendants as a means to enable the second defendant, at least, to block any attempt by the plaintiffs to recover possession of the premises in question, when in actual fact the first defendant was carrying on his own business there under the style of `Liberty Stores`.

5 Before finalizing his judgment he also took note of the following matters:

(a) that PW2 was kept in ignorance of changes in the partnership over the years and of the fact that other businesses were being conducted at the premises;

(b) that it could be argued that the second appellant remained in possession of the premises, even after physically vacating them, through his partner, the first appellant. He nevertheless concluded otherwise after analysing the evidence, inter alia, as aforesaid.

6 It was argued by his counsel that the second appellant claimed under cross-examination that he still had a desk at the premises and a key to the front door. Counsel relied on this claim to show that the second appellant retained his right to possession. Having regard to the total ignorance which he evinced of the actual operations of the business, as found by the district judge, I am not impressed by the argument that because he made this claim he retained the `animus` necessary to possession and that he had not abandoned his statutory tenancy.

7 It must be remembered that the first appellant at first tried to make out that the second appellant did not move out of the premises but later reluctantly admitted that he stopped coming back to sleep there in 1973. He had earlier said that he was unable to remember when the second appellant moved out. The second appellant, however, made no bones of the fact that he left the premises in 1952, ie more than 20 years before the writ! Since the first appellant moved into occupation of the premises as early as in 1950 (which he later changed to 1952) he should have known only too well when it was that he was left in sole physical occupation.

8 The retention, if true, of the desk and the key, after the second appellant left the premises in 1952 obviously appeared to have been done in furtherance of an impious hope on his part to utilise this fact as a means of substantiating the necessary `animus` at some future date, if and when the need should arise, as it did in fact arise when these proceedings were instituted.

9 In the circumstances, he did not remain in possession of the premises after 1966 as the district judge found. Once he ceased to remain in possession, he ceased to remain a statutory tenant by reason of s 27(a) and s 28 of the Control of Rent Act (Cap 266, 1970 Ed) had no application to his case for the reasons set out clearly by Thomson LP in ***Tan Khio Soei & Anor v Ban Hin Lee Bank Ltd*** [1964] MLJ 71 at p 72. The material portions of these sections read:

27. The following persons are statutory tenants under this Ordinance, namely:

(a) any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord;

...

28. A statutory tenant shall hold the premises of the landlord upon the following terms and conditions, namely:

...

(b) his tenancy shall be subject to be determined by such notice as would have been required by law to determine a monthly tenancy of the premises containing no express provision for determination.

10 The learned Lord President was sitting on an appeal against a judgment involving a statutory tenant of premises in Singapore in whose case the applicability of s 28 (formerly s 17) was considered. His Lordship reiterated what he had earlier stated in the case of **Ramasamy Pillai v Meyappa Chettiar** [1955] MLJ 105 that there was no difference between a statutory tenant under our legislation and a statutory tenant under the English Rent Acts and went on to cite with approval the position of such a tenant as described by Bankes LJ in **Keeves v Dean** [1924] 1 KB 690 to the following effect:

His right is a purely personal one, and as such, unless the statute expressly authorizes him to pass it on to another person, must cease the moment he parts with the possession or dies.

11 This `dictum` of Thomson LP was disputed but it has stood the test of time and is still being followed in Singapore and in Malaysia (see eg **United India Fire & General Insurance Co v Jaffnese Co-operative Society** [1971] 1 MLJ 118). Moreover, it had the concurrence of the remaining members of the Federal Court including our own Chief Justice.

12 Since the second appellant parted with possession in 1966 at least, I failed to see how he could possibly have remained a statutory tenant when these proceedings commenced in 1973. Counsel for the appellants submitted that it is only when such a statutory tenant dies that such a tenant ceases to have the protection of s 28. I could not accept this proposition. Moreover, the second

appellant not only parted with possession but ceased altogether to remain in possession thereof.

13 I accordingly dismissed the appeal against the judgment of the district judge with costs but allowed a stay pending further appeal.

14 ***Appeal dismissed .***

A V Winslow J

Karuppan Chettiar and TG Dunbar (Murphy & Dunbar) for the
appellants
Kirpal Singh (Mallal & Namazie) for the respondents
