

O N A P P E A L

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE OF TRINIDAD AND TOBAGO

B E T W E E N :

WILFRED ISAAC Appellant

- and -

ALFRED FRANCIS Respondent

CASE FOR THE APPELLANT

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1. This is an Appeal by Special leave of the Judicial Committee of the Privy Council granted on the 9th day of March 1977, from a judgment and Order dated 16th November 1976 of the Court of Appeal of Trinidad and Tobago (Corbin and Rees JJ.A) made on appeal from the decision of His Worship Mr. Anthony Gapoor, Magistrate dated 17th January 1975 granting a warrant for possession of premises comprising a lot of building land in Poart of Spain in the Island of Trinidad by which the decision of the magistrate was set aside with costs and his order vacated.

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pp.18-19
pp.14-15

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2. The proceedings were commenced by a complaint lodged by the Appellant in the Magistrates' Court at Port of Spain under the provisions of Section 3 of the Summary Ejectment Ordinance, Ch.27 No.17. The Appellant claimed from the Respondent possession of one lot of land measuring 50 feet by 60 feet part of a larger area of land in Isaac Terrace, Port of Spain.

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3. The substance of the complaint was that the lot of land was rented at \$20.00 per month to Myra Smith who died on the 25th day of November 1966, that the tenancy was determined by notice to quit dated the 14th August 1972 which notice was served on the Administrator General and that the

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Respondent was a person who was actually occupying the land after the termination of the tenancy and had refused to deliver up possession thereof.

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4. By his evidence at the hearing the Respondent claimed in answer to the complaint for possession that he was a tenant of the premises and had paid rent until 1972.

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p.5 lines
14-22

5. The Appellant gave evidence on his own behalf and testified that he let the land to Myra Smith also called Edwina Smith who died on 25th November 1966 and that he terminated the tenancy by serving a notice to quit on the Administrator General on the 14th August 1972. This evidence was not disputed at the hearing. The Appellant also said :-

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p.6 lines
13-47

p.7 lines
1-9

"Edwina Smith was a tenant for about 6-7 years before her death. The defendant is now in occupation of that house. On 21st September 1972 I served him with the original of this notice

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Cross examined by Mr. Sinanan

The parcel of land on which the defendant occupied has a house on it. That is the house in which Myra Smith lived. I don't know if she lived with the defendant. I know she was married. Her husband is alive. I do not know with whom she was living. The defendant is living in the house now. He was not there before she died. I rented her that piece of land. She built a house on it. The defendant lives in it. By action ~~96~~ 96 of 1969 I brought him up in the High Court

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.....
My writ was endorsed the plaintiff claims against the defendant for trespass, an order requiring him to remove the building from the premises

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..... I filed a statement of claim. I can't remember if a counter claim was put in. The case was tried. It was dismissed. There was no decision. My claim was practically thrown out. It was the same piece of land but it was a different claim

6. The Appellant also gave evidence in cross-examination concerning the receipt of rent. He said :-

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p.8 lines
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p.9 line 1

10 "I last got my rent a very long time ago,
a matter of years. Myra Smith died the
same length of tike. I can't say
exactly when. I did not get rent after
she died. I cannot remember. He said she
left a will. I say there is no will.
I don't know when Myra Smith died. I
can't remember when last I received rent
- a very long time ago. I never paid
any heed to the rent. I got a postal
order but I paid no heed to it. I got
one (1) or two (2) plenty years ago,
about (3) or (4) years ago. I put them
in evidence. This is after Myra Smith
died.

7. The appellant in re-examination also
said :-

20 "At the time of her death, this man was
not living there. I said that she was
married. Her husband was Fitzgerald
Smith. I know him personally. I know
him while he lived at D'Abadie, Red Hill.
He used to be backward and forward. I
was asked about receiving rent. I never
received rent from the defendant. Postal
Orders were sent by him. I never paid
any heed to it. I never issued receipts
to the defendant at any time. He is
30 now in occupation of those premises".

8. The Respondent said in his evidence
that he lived in the house with Myra Smith
and that he was the next owner of it. He
said :-

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"I am the next owner of the house. Myra
Smith died in 1961. She lived there.
I was living with her in this house on
Isaac's land. We paid rent. Sent it by
post. It never came back. Myra Smith
died. He brought an action against me
in the High Court. I paid rent up to
1972.

p.10 lines
11-45

Cross examination

50 I am married. My wife lives in the house
right now. She is Mildred Francis. I
can't remember when I was married. It
was after Myra died that I married.
I lived with Myra since 1942. I know
her husband was Fitzgerald Smith.

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I don't know where he lives. At her death I don't know if Fitzgerald Smith was still alive. I didn't get any receipts. I have no receipts. Myra Smith had receipts. I have those receipts. I don't have them here. Myra Smith died in 1966. The tenancy of the land is in the name of Myra Smith. Up to the time Myra Smith died she used to get receipts. After her death no receipts were issued. As a result of Myra Smith's death, I went to him and he said he would not take rent from me. I decided to post the rent. He told me he did not want me to be a tenant. I wanted receipts in my name. He said no. I decided to post the rent to him. I have no documents to indicate that Isaac paid the rent. Mr. Milne, my solicitor, has the receipts. I don't have any such evidence in my pocket here.

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Re-examined:

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p.11 lines
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Mr. Isaac refused to put the tenancy in my name

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p.11 lines
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p.12 lines
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9. A witness Winston Cooper of the Administrator General's Department said the notice to quit was served on him on the 19th August 1972. Another witness Deonarine Peoran was called by the Respondent to testify concerning proceedings No. 196 of 1969 between the Appellant and the Respondent in the High Court and to produce the formal order of the Court but no argument was raised in respect of these proceedings either in the Magistrates Court or in the Court of Appeal.

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10. The Magistrate concluded upon the evidence that the tenancy of Myra Smith was duly determined having regard to the decision in Gafooran Ali v. Ashraph 7 West Indian Reports 354 and that there never was established as between the Appellant and the Respondent the relationship of landlord and tenant. In deciding upon the claim of the Respondent to a tenancy of the premises the Magistrate said :-

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p.19 lines
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"4. The evidence of the defendant was that he was living with Myra Smith in a house on the land in question. He contended that he paid rent up to 1972. No receipt was tendered in support of this allegation by Mr. Gaspard: "Up to the time Myra Smith died she used to get receipts. After her death no receipts were issued I went to him and he said he would not take rent from me.

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5. The Court found on the evidence that the Defendant was not a tenant as defined under Ch.27 No.18 (P.965). The evidence of both the complainant and defendant was that the deceased was married, and the complainant testified that the husband one Fitzgerald Smith is alive. This was accepted by the Court. Where as in this case there is a surviving spouse the occupier does not acquire the status of a tenant as contemplated above.
(See Tinkam v. Perry (1951) 1 A.E.R. P.249).

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6. The court found also that the defendant paid no rent to the complainant nor was he accepted as tenant by the complainant."

p.19 lines
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Having held that there was no relationship of landlord and tenant between the parties the Magistrate made an order that a warrant for possession should issue against the Respondent.

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p.14 lines
16-20
pp.14-15

12. The Respondent appealed to the Court of Appeal on the ground that the decision of the Magistrate was erroneous in law in that he held that the Respondent was not a tenant of the Appellant. At the hearing of the appeal the Respondent amended his notice of appeal with leave of the Court of Appeal to argue that the Magistrate had no jurisdiction to hear the complaint.

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13. The Court of Appeal (Corbin and Rees JJ.A) held on the evidence that the appellant did not succeed to the tenancy of Myra Smith as a member of her family under the provisions of the Rent Restrictions Ordinance, Ch.27 No.18 and that there was no evidence of a landlord and tenant relationship between the Appellant and the Respondent. The Court held, however, that Sections 3 and 5 of the Summary Ejectment Ordinance, Chapter 27 No.17 made it necessary for the tenant to be joined the Magistrate had no power to make an order for possession against the Respondent.

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p.22 lines
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14. Sections 3, 4 and 5 of the Summary Ejectment Ordinance, Chapter 27 No.17 read as follows :-

3. "When and so soon as the term or interest of the tenant of any premises held by him at will or for any term not

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exceeding two years, either without being liable to the payment of any rent or at a rent not exceeding the rate of Two Hundred and Forty Dollars per annum shall have ended or shall have been determined by a legal notice to quit or otherwise, and such tenant, or (if such tenant do not actually occupy the premises or only occupy a part thereof) any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises or of such part thereof respectively, it shall be lawful for the landlord of the said premises or his agent to make complaint on oath before the Magistrate for the district in which such premises or any part thereof is situate. Such complaint may be in the form contained in the First Schedule hereto or such other form as the circumstances of the case may require.

4. The Magistrate shall, upon such complaint, issue a summons in the form contained in the Second Schedule hereto or such other form as the circumstances of the case may require, directed to such tenant or occupier, and requiring him to appear before such Magistrate at such place and time, being not less than three days after the service of such summons, as may be mentioned therein.

5. If the tenant shall not appear in obedience to such summons and show to the satisfaction of the Magistrate reasonable cause why possession should not be given up, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof as he is then in possession of, to the landlord or his agent, it shall be lawful for such landlord or agent to give to the Magistrate proof of the holding and of the end or other determination of the tenancy with the time and manner thereof, and, where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession, and upon proof of the service of the summons and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for such Magistrate to order such tenant or occupier to pay a fine not exceeding twenty four dollars and the costs incurred by such landlord or agent, and such Magistrate shall within thirty days of the making of the order issue a warrant under his hand to any constable

10 of the district within which such premises or any part thereof is situate commanding him, within a period to be named therein, being not less than three nor more than seven clear days from the date of such warrant, to enter, by force if needed into the premises and give possession of the same to such landlord or agent: Provided that entry upon any such warrant shall not be made on a Sunday, Good Friday, Corpus Christi, or Christmas Day. Such warrant may be in the form set forth in the Third Schedule hereto or such other form as the circumstances of the case may require.

20 15. It is submitted that the Court of Appeal took a wrong view of the case having regard to the provisions of Sections 3 and 4 of the Ordinance which contemplate the issue of a complaint against either the tenant or the occupier depending upon which of the two is in possession and the Court further erred in failing to hold that where a tenant ceases to occupy or is not in occupation when the tenancy is determined by notice there is no ground for making complaint against him. A fortiori the Court ought to have held this to be the case where there is no evidence that the tenant was in a position to authorise or did authorise occupation by
30 the actual occupier subsequent to the determination of the tenancy. It is further submitted that the sections of the Ordinance set out above are aimed only at actual physical possession of the premises subsequent to the lawful determination of the tenancy and that the Ordinance was never intended to enable proceedings to be taken against a tenant who is not in possession.

40 16. It is also submitted that section 5 of the Ordinance when read as a whole does not require expressly or impliedly that there should be complaint against a tenant who is not in possession or occupation of the premises and that in those circumstances the section contemplates the making of an order and the issue of a warrant of ejectment by the Magistrate against the actual occupier even though the complaint is brought against such occupier alone.

50 17. The Appellant respectfully submits that :-

(i) this Appeal should be allowed with the

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costs of this appeal in the Privy Council
and of the proceedings in the Courts
below; and

- (ii) that an order for the warrant of ejectment
to issue forthwith should be made.

for the following amongst other

R E A S O N S

(1) BECAUSE the tenancy of Myra Smith was duly
determined and the Appellant became entitled to
recover possession of the premises in proceedings
under the provisions of the Summary Ejectment
Ordinance, Ch. 27 No. 17. 10

(2) BECAUSE the Respondent has established no
right to be in possession or occupation of the
premises.

(3) BECAUSE Sections 3, 4 and 5 of the Summary
Ejectment Ordinance authorised the proceedings
which were taken before and the issue of the
warrant by the Magistrate.

(4) BECAUSE the judgment of the Court of Appeal
was wrong and ought to be reversed. 20

(5) BECAUSE the decision of the Magistrate was
correct.

FENTON RAMSAHOYE S.C.

KENNETH SAGAR

No. 23 of 1977

IN THE PRIVY COUNCIL

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