

A

JIWAN AND ANOTHER

v.

RAM PRASAD

B

[SUPREME COURT, 1966 (Hammett Ag. C.J.) 1st July]

Appellate Jurisdiction

C

Rent control—two or more joint lessors—recovery of premises—only permissible under section 14(1) (e) of the Fair Rents Ordinance (Cap. 39) where required by all lessors as a dwelling house—Fair Rents Ordinance (Cap. 39) s.14(1) (e)—Fair Rents Ordinance 1965 s.19(1) (e)—Interpretation Ordinance (Cap. 1) s.2(58)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933 (23 & 24 Geo. 5, c.32) (Imperial) s.3(1), Schedule 1.

D

Interpretation—Ordinance—singular including plural—whether section 2(58) of Interpretation Ordinance (Cap. 1) inconsistent with context of section 14(1) (e) of Fair Rents Ordinance (Cap. 39).

Landlord and Tenant—protected premises—joint lessors—bona fide requirement by all for joint residence pre-requisite to right of recovery of possession—Fair Rents Ordinance (Cap. 39) s.14(1) (e)—Fair Rents Ordinance 1965 s.19(1) (e)—Interpretation Ordinance (Cap. 1) s.2(58)—Rent and Mortgage Interest Restrictions (Amendment) Act 1933 (23 & 24 Geo. 5, c.32) (Imperial) s.3(1), Schedule 1.

E

Under the provisions of section 14(1) (e) of the Fair Rents Ordinance (Cap. 39) (later replaced in identical terms by section 19(1) (e) of the Fair Rents Ordinance 1965) read in conjunction with section 2(58) of the Interpretation Ordinance, in cases where there are two or more joint lessors of property, assuming they are otherwise entitled to recover possession, they may only do so if possession of the premises is *bona fide* required by all of them as a dwelling house. It is not enough that possession is required for occupation by only one or even by only some of them.

F

McIntyre v. Hardcastle [1948] 2 K.B. 82; [1948] 1 All E.R. 696, followed.

G

Cases referred to: *Baker v. Lewis* [1947] K.B. 186; [1946] 2 All E.R. 592; *Wetherall & Co. Ltd. v. Stone* [1950] 2 All E.R. 1209; 66 (pt. 2) T.L.R. 1095; *Woodward v. Dudley* [1954] Ch. 283; [1954] 1 All E.R. 559.

Appeal from a judgment of the Magistrate's Court dismissing a claim for possession of residential premises.

C. L. Jamnadas for the appellants.

T. Madhoji for the respondent.

H

The facts appear sufficiently from the judgment.

HAMMETT Ag. C.J. : [1st July, 1966]—

This is an appeal from the Magistrate's Court of the First Class sitting at Suva whereby the Plaintiffs-Appellants' claim for recovery of possession of residential premises in Suva, occupied by the Defendant-Respondent as their tenant, was dismissed.

The facts found by the Court below are that the two Appellants are the joint owners of a dwelling house occupied by the Respondent as a tenant.

On 12th May 1965 the Appellants served a six-months notice to quit on the Respondent who did not comply with such notice. The premises were protected by the provisions of the Fair Rents Ordinance (Cap. 39) (which was later replaced by the Fair Rents Ordinance 1965) and on 28th January 1966 the Appellants issued a summons in the Court below claiming possession on the grounds that the Appellants required the premises for their *bona fide* use.

In the course of the evidence it was made clear that only one of the two Appellants in fact wished to occupy the premises. The other is happily housed elsewhere and has no intention of moving into these premises to share their occupation with his Co-Appellant. In fact this is the last thing desired because the two Appellants are not on good terms with each other.

The learned trial Magistrate held that, quite apart from any other considerations, since only one and not both joint owners required to occupy the premises, the claim must fail.

The Appellants have appealed against that decision on the following three grounds :

- "1. The learned Magistrate was in error in law in holding that as both lessors did not require the premises for their own occupation the claim for possession failed.
2. The learned Magistrate ought to found on the evidence that the first-named Plaintiff *bona* required the premises for his own occupation as a dwelling house.
3. The learned Magistrate ought to have made an order for possession of the premises in favour of the first-named Plaintiff."

The material part of section 14(1) (e) of the Fair Rents Ordinance (Cap. 39) which has since been replaced in identical terms by section 19 (1) (e) of the Fair Rents Ordinance 1965 reads :

"No judgment or order for the recovery of possession of any dwelling house or for the ejectment of a lessee therefrom shall be made... unless the premises are *bona fide* required by the lessor for his own occupation as a dwelling house etc..."

The Interpretation Ordinance, section 2(58) reads :

"In this Ordinance and in every other Ordinance and in all public documents enacted, made or issued before or after the commencement of this Ordinance the following words and expressions shall have the meanings hereby assigned to them

respectively unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided :

- A
 (58) words in the singular include the plural and words in the plural include the singular."

It is the contention of the Appellants that the word "lessor" in section 14(1) (e) of the Fair Rents Ordinance (Cap. 39) cannot consistently and should not logically be construed as "lessors", even where there are in fact two co-lessors because it is not logical so to construe the same word in the proviso to the section or in the following section.

- B I have examined these provisions and whilst I appreciate the point made, I cannot entirely agree that it is not possible to construe the word "lessor" as "lessors" in those places. I will concede, however, that there must be so very few instances arising where, if the word is construed as "lessors", the proviso would be of any effect that it is doubtful if that is what the Legislature had in mind when it passed this enactment. Nevertheless that is what the Ordinance says and it is not within the province of the Court to question the logic of such provisions.

- C In *McIntyre & Anor. v. Hardcastle* [1948] 1 All E.R. 696, two sisters who were joint landlords of a dwelling house claimed possession from a tenant on the ground that one of them required the house for occupation as a residence for herself.

At the time that case was decided, the equivalent legislation in England to the Fair Rents Ordinance in Fiji was the Rent and Mortgage Interest Restrictions (Amendment) Act 1933 of which the material part of section 3(1) reads :—

- E "No order or judgment for the recovery of possession of any dwelling house...shall be made...unless...the court has power to do so under... Schedule I to this Act..."
 and the material part of Schedule I reads :—

- F "A court shall for the purposes of section 3 of this Act have power to make...an order...for the recovery of possession of any dwelling house to which the principal Acts apply...if... the dwelling house is reasonably required by the landlord... for occupation as a residence for... himself... etc."

- G At the trial the learned County Court trial Judge held, on the authority before him and in particular on that of *Baker v. Lewis* [1946] 2 All E.R. 592, that as there were two joint landlords, the word "Landlord" must be construed as "Landlords" and since possession was required for occupation by only one of them the claim for possession must fail.

Again this decision the landlords appealed to the Court of Appeal on this point of interpretation. In his judgment in the Court of Appeal which upheld the decision of the County Court Judge, Tucker L.J. quoted extensively from the judgment of Asquith L.J. in *Baker v. Lewis* and said :—

- H "All kinds of difficulties have been suggested as likely to follow whichever interpretation is accepted by us. I do not think that

the legislature contemplated this situation at all when this paragraph was framed, and, therefore, I feel driven to interpret it merely in the light of the actual language used. Looking at it in that way, I feel convinced that the interpretation put on it by Asquith L.J., was the correct one and I do not desire to attempt to put into better language that which he so clearly expressed in the judgment which I have just read. For those reasons, I think that the county court judge came to a right decision on this matter.”

The considerations which arose in that case were precisely the same considerations that arise in this case. In this appeal I am being invited to hold that the learned trial Magistrate was wrong in deciding this case on similar lines and that the decision of the Court of Appeal in *McIntyre v. Hardcastle* (*supra*) is not sound. It is submitted that in cases where the premises are owned by two or more joint lessors, the word “lessor” in section 14(1) (e) should not be construed as “lessors” but as “any one or more of the joint lessors”.

I see no reason why the section should be so construed as is urged by Counsel for the Appellants. I have, however, tried to ascertain whether the decision of *McIntyre v. Hardcastle* has ever been questioned, distinguished or not followed in any case since 1948 when it was decided.

In *Wetherall & Co. Ltd. v. Stone* [1950] 2 All E.R. 1209 the Court of Appeal applied the decision reached in *McIntyre v. Hardcastle* and in his judgment Jenkins L.J., said :—

“*McIntyre v. Hardcastle* dealt with a different Act, but the words there construed are sufficiently similar to the words here in question to make it wrong, in my view, for us to place a different construction on the words here, even if otherwise we might be disposed to do so.”

Again, in *Woodward v. Dudley* [1954] 1 All E.R. 559 Dankwerts J. followed the principle in *McIntyre v. Hardcastle* and applied it to a different set of circumstances.

I have been unable to find any case since 1948 in which the soundness of the decision in *McIntyre v. Hardcastle* has been questioned. I am of the opinion that the learned trial Magistrate was correct in applying the same principle in this case.

In my view, in cases where there are two or more joint lessors of premises, assuming they are otherwise entitled to recover possession, they may only do so under the provisions of section 14(1) (e) of the Fair Rents Ordinance if possession of the premises is *bona fide* required by all the joint lessors for joint occupation by all of them as a dwelling house. It is not enough that possession is required for occupation by only one or even by only some of them.

The appeal is dismissed and the Appellants must pay the taxed costs of the Respondent.

Appeal dismissed.