[2009] UKPC 51
Privy Council Appeal No 0038 of 2009

JUDGMENT

Herman Ramdass (Appellant) *v* Marilyn Bahaw-Nanan (Respondent)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Rodger
Lord Walker
Lord Collins
Lord Kerr
Sir Christopher Rose

JUDGMENT DELIVERED BY

LORD WALKER

ON

14 December 2009

Heard on 19 October 2009

Appellant	*Respondent*
Anand Beharrylal	Thomas Roe
(Instructed by Lee & Kan)	(Instructed by Southfields)

LORD WALKER:

The facts and the course of the litigation

1. On 1 April 1996 Mrs Marilyn Bahaw-Nanan (the respondent before the Board) issued a writ against Mr Herman Ramdass (the appellant before the Board) claiming possession of a plot of land at New Colonial Company Road, Barrackpore and mesne profits from 2 December (an error for 22 December) 1984. Her statement of claim pleaded that Mrs Bahaw-Nanan was the owner of the land (with particulars of her title); that the land had been let to Mr Herman Ramdass's father, Mr Bhim Ramdass, by an oral agreement on an annual tenancy at a yearly rent of $16; that the tenancy had been determined by one or other of two notices to quit served on 30 December 1986 (agreed to be an error for 1976) and 30 December 1979, but that Mr Bhim Ramdass had remained in possession until his death on 21 December 1984; and that Mr Herman Ramdass was in unlawful possession as a trespasser. The statement of claim also pleaded that the plaintiff's right to possession was not subject to any statutory restrictions. Mr Ramdass's defence denied the validity of the notices to quit and counterclaimed for a declaration that he was the lawful tenant. It made no positive case as to any statutory protection. The pleadings on both sides were drafted and signed by attorneys.

2. Apart from the statement in the defence that Mr Herman Ramdass was born in 1960 and had lived on the land all his life, neither pleading made any reference to the fact (which is now common ground) that on the land there was a house which had been constructed by Mr Bhim Ramdass. The Board was shown some photographs of the house. It is a substantial wooden house raised off the ground by steel joists, with concrete foundations and outside stairs. It is by no means the sort of prefabricated cabin that could be lifted with a crane and put on a lorry. There was no evidence as to exactly when it was built, but on Mr Ramdass's evidence it would have been before 1960.

3. The case took a long time to come to trial. It was heard by Ventour J on 11 June 2004. He heard evidence from the parties and from two other witnesses called on behalf of Mrs Bahaw-Nanan. The judge made his order shortly afterwards, on 5 July 2004. He made an order for possession and awarded mesne profits from 1978 until judgment. He awarded Mr Ramdass $30,000 as compensation for the value of the house. He made no order as to costs.

4. The judge's reasons for his order were given in writing on 3 January 2007. On the pleaded issue he accepted the evidence that a notice to quit had been served by

Mrs Bahaw-Nanan's mother (who owned the property from 1976 until 1981) and that the tenancy was lawfully terminated with effect from 1978.

5. In his written reasons the judge also considered two issues which had not been raised in the pleadings, but had been raised in counsel's oral submissions. These were as to the effect of the Rent Restriction Act (Ch 59: 50) and the Land Tenants (Security of Tenure) Act (Ch 59: 54). It is accepted that the judge was right to consider these matters, since it is the court's duty to see whether a tenant is entitled to statutory protection, even if the point is not pleaded or raised by the tenant (*Smith v Poulter* [1947] KB 339, 341). The judge's conclusions on the issues as to statutory protection, in brief summary, were that Mr Ramdass continued in occupation of the land as a statutory tenant under the Rent Restriction Act, but that as a statutory tenant he did not have a tenancy entitling him to a statutory lease under the Land Tenants (Security of Tenure) Act. These statutes are summarised and considered below.

6. Mr Ramdass appealed and on 11 January 2008 the Court of Appeal (John, Archie and Weekes JJA) dismissed the appeal without calling on the respondent's counsel. John JA is reported as having said that the appeal had no merit, and that the Court would put its reasons in writing if necessary. The Board was told that the Court of Appeal has not given even brief written reasons, despite requests. That is regrettable but the Court must be taken to have seen no reason to disturb the judge's decision on any issue of law or fact. Mrs Bahaw-Nanan did not cross-appeal against the award of $30,000 compensation which she was ordered to pay to Mr Ramdass.

7. The Court of Appeal also refused Mr Ramdass leave to appeal to the Board. That has been another matter of complaint but it is now academic since the Board gave leave. The Board has not however permitted Mr Ramdass's counsel to raise an entirely new point, not so much as hinted at below (and inconsistent with the whole thrust of his case below) as to Mr Ramdass having acquired a title by adverse possession.

The Rent Restriction Act

8. The Rent Restriction Act was enacted (as the Rent Restriction Ordinance) in 1941 at a time when there was an acute shortage of accommodation in Trinidad and Tobago. It was modelled on the British rent restriction legislation. Its purpose was to restrict rents, and to provide a degree of security of tenure, for tenanted property in various categories. Its provisions applied (section 3(1)) to building land, dwellinghouses and public and commercial buildings (those three expressions being defined in section 2(1)) in specified areas of Trinidad and Tobago, subject to various exceptions in section 3(2). "Building land" was defined as

> “land let to a tenant for the purpose of the erection thereon by the tenant of a building used, or to be used, as a dwelling or for the public service or for business, trade or professional purposes, or for any combination of such purposes, or land on which the tenant has lawfully erected such a building, but does not include any such land when let with agricultural land.”

“Tenant” was defined as including –

> “(a) a sub-tenant and any person deriving title from the original tenant or sub-tenant, as the case may be;
>
> (b) the widow of a tenant who was residing with him at the time of his death, or, where a tenant leaves no widow or is a woman, such member of the tenant’s family as was residing with the tenant for not less than six months immediately before the death of the tenant as may be decided in default of agreement by a court or by a [Rent Assessment] Board.”

9. Under section 4 the President had power, by Order subject to affirmative resolution of Parliament, to extend the provisions of the Act, to give directions as to the ascertainment of rents, to exclude areas from the operation of the Act and (section 4(1)(d)):

> “exclude from the operation of this Act any specified premises, or any specified classes or descriptions of premises, or any specified classes or descriptions of premises in a specified area.”

Sections 5 to 13 dealt with the control of rents, including restrictions on premiums and penalties for contraventions.

10. Sections 14 and 15 (whose derivation from the British legislation is easy to see) were concerned with restricting a landlord’s right to possession. By section 14(1) there was to be no possession order in respect of premises to which the Act applied unless the case fell within one or more of paragraphs (a) to (r) of the subsection. These included arrears of rent and other breaches of the tenant’s obligations; the premises being required for a variety of other purposes; termination of an employment to which the tenancy is linked; and so on. Section 14(1) further provided that the court was to make the possession order only if it was reasonable to do so, and (in some cases) that less hardship would be caused by making the order than by refusing it. Section 15(1) (with the side-note “Conditions of statutory tenancy”) provided:

> "A tenant who, under this Act, retains possession of any premises shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with this Act, and shall be entitled to give up possession of the premises only on giving such notice as would have been required under the original contract of tenancy; but, notwithstanding anything in the contract of tenancy, a landlord who obtains an order for the recovery of possession of premises or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant."

11. One of the most curious features of the Rent Restriction Act was section 1(2), which (in its original form) provided:

> "This Act shall continue in force until 23 February 1981 and may be continued in force for a further period of three years at a time by resolution of Parliament."

It had, as the modern expression is, a 40-year "sunset clause". Section 1(3) provided that the expiration of the Act should not affect accrued rights to recover rent or other sums payable under its provisions, and should not affect any criminal liability.

12. On 20 March 1981 Parliament enacted the Rent Restriction (Re-enactment and Validation) Act 1981, which was passed by the special majorities required by section 13 of the Constitution (Acts inconsistent with sections 4 and 5). Section 2 provided:

> "The Rent Restriction Ordinance hereinafter referred to as 'the Ordinance' is re-enacted with effect from 24 February 1981."

Section 3 expressly validated acts and things done during the four-week period since 23 February 1981. Mr Thomas Roe (who appeared pro bono for Mrs Bahaw-Nanan, and gave the Board valuable assistance with his written and oral submissions) argued, with no great enthusiasm, that this Act, literally construed, was wholly ineffective, and that a literal construction must be adopted. That argument has some force because although Parliament certainly intended to prolong the life of the Rent Restriction Act, the period for which it was to be prolonged is little more than guesswork (and the 1985 Act mentioned in the next paragraph seems to acknowledge that total invalidity was at least a possibility). However it would be a very strong thing to say that the 1981 Act was wholly ineffective. In the Board's opinion the Act must be taken as having been intended to effect a three-year extension until 23 February 1984.

13. The Rent Restriction (Re-enactment and Validation) Act 1985, also passed under the special procedure in section 13 of the Constitution, did by section 2 effectively continue the Rent Restriction Act until 23 February 1987, with provision for extension for further periods of three years at a time by resolution of Parliament. Section 3 validated acts and things done "notwithstanding that the Act ceased to have effect on the 23 February 1981". The process of re-enactment appears to have continued at intervals from 1987 until the Rent Restriction (Re-enactment and Validation) Act 2000, which re-enacted the Rent Restriction Act with section 1(2) in the following form:

> "This Act shall continue in force until 23 February, 2002 and may be continued in force for further periods of three years by affirmative resolution of Parliament."

Mr Roe's researches indicate that a further Bill was laid before Parliament in 2002 but lapsed. The Rent Restriction Act has therefore ceased to have effect as from 23 February 2002.

14. Mr Roe's researches also discovered, very much at the last moment, the Rent Restriction (Dwelling-Houses) Act (Ch 59:55) which came into force on 24 December 1981, and remains in force. It is surprising that this statute seems not to have been referred to at any stage below, or in the appellant's case before the Board. However, Mr Beharrylal (for Mr Ramdass) disclaimed any reliance on this Act, although section 15(1) (which extends the effect of sections 14 and 15 of the Rent Restriction Act) was arguably relevant. It is sufficient to say that the Board accepts Mr Roe's written submission that the operation of section 15(1) of the Rent Restriction (Dwelling-Houses) Act cannot have survived the expiration of the Rent Restriction Act.

15. There was also a series of Orders made by the President under section 4 of the Rent Restriction Act. Mr Roe drew attention to these, but did not place much reliance on them. They were not fully investigated in the course of oral argument, and it is sufficient to say that the Orders may have progressively reduced the practical importance of the Rent Restriction Act some time before its final expiration.

The Land Tenants (Security of Tenure) Act

16. This statute was enacted in 1981 in compliance with the procedure in section 13 of the Constitution. The Board was shown extracts from parliamentary debates in the House of Representatives during the passage of the Bill (originally entitled the Chattel Buildings Bill) which led to its enactment. These extracts cast no light at all on the main issue of statutory construction raised in this appeal (and so cannot possibly

qualify under the rule in *Pepper v Hart* [1993] AC 593) but they do help to explain the social background and general purpose of the Bill.

17. As the Attorney General and Minister for Legal Affairs explained (Hansard for 20 March 1981, cols 1804 to 1814) a "chattel house" was a familiar expression in Trinidad and Tobago, and originally that expression had the meaning which it would convey to someone familiar with English property law – that is a wooden structure which was used for human habitation but which, because of its structure, modest size and lack of solid foundations, could (physically and legally) be removed to another site. So if it had been built by a tenant he could remove it at the end of his tenancy. But as tenants began to build more substantial houses, using concrete, iron and steel, the removal of a house at the end of a tenancy was often both physically impossible and unlawful as between landlord and tenant: see *Mitchell v Forde* (1963) 5 WIR 409, where there is a scholarly discussion by Fraser J of the position of chattel houses under the law of Trinidad and Tobago.

18. With that background knowledge the scheme of the Land Tenants (Security of Tenure) Act is easier to discern. Section 3 contains three important definitions:

> "'chattel house' includes a building erected by a tenant upon land comprised in his tenancy with the consent or acquiescence of the landlord and affixed to the land in such a way as to be incapable of being removed from its site without destruction;
>
> 'existing tenancy' means a tenancy to which the Act applies as subsisting immediately before its conversion to a statutory lease by section 4; …
>
> 'tenant' means any person entitled in possession to land under a contract of tenancy whether express or implied, and whether the interest of such person was acquired by original agreement or by assignment or by operation of law or otherwise; and includes a tenant at will and a tenant at sufferance and 'tenancy' shall be construed accordingly."

It is important to note the word "includes" in the first of these definitions. A chattel house properly so called (which can be removed without destruction) is also within the definition, as is clear from section 5(4).

19. By section 3(1) the Act applied (subject to some immaterial exceptions in section 3(2)) to a tenancy of land on which, on the passing of the Act (1 June 1981), a

chattel house used as a dwelling was erected or in course of erection. Section 4 provided that every such tenancy should, as from the passing of the Act, become a statutory lease for a term of 30 years (renewable by the tenant for a further term of 30 years). The rest of the Act is concerned with the terms of the statutory lease, including rent, a tenant's option to purchase the land, and similar matters. They need not be addressed because the principal issue for the Board is, as it was for the courts below, whether Mr Ramdass, as a statutory tenant, became entitled to a statutory lease on the passing of the Act on 1 June 1981.

20. There are therefore two issues:

(1) Was Mr Ramdass a statutory tenant on 1 June 1981?

(2) Does the Act apply to a statutory tenancy so as to convert it into a statutory 30-year lease?

The judge held in favour of Mr Ramdass on the first issue but against him on the second. On the second issue he was following two decisions of the Court of Appeal, *De Hayney v Ali* (1986) Mag. App. No 169 of 1984 and *Alexander v Rampersad* (1998) Civ. App. No 11 of 1989.

The first issue

21. The first issue can be disposed of quite shortly. Indeed there has been little dispute about it. The judge, relying on the second part of the extended definition of "tenant" in the Rent Restriction Act, held that Mr Ramdass succeeded his father as statutory tenant. That was on the basis that his mother had died in 1981, and there is no indication that Mr Ramdass's sister (who was her father's executor) made any claim to the house, or indeed was living in the house after her father's death. Mr Roe's researches into the history of the Rent Restriction Act raised two possible issues: first, whether that Act was in force at all on 1 June 1981; and second, whether the house, if built after 1954, was excluded from the operation of the Act by the Rent Restriction (Exclusion of Premises) Order made on 12 February 1954 (or was excluded, whenever built, by some later order). The Board has decided the first of these points against Mr Roe (para 12 above) and he did not pursue the second in oral argument. The Board proceeds, therefore, on the footing that Mr Ramdass was a statutory tenant until the Rent Restriction Act finally expired on 23 February 2002.

The second issue

22. Mr Beharrylal set out to overturn *De Hayney v Ali* and *Alexander v Rampersad*, two decisions of the Court of Appeal which lower courts must have followed on numerous occasions. In *De Hayney v Ali* the facts were essentially similar to those of the present case. The leading judgment in the Court of Appeal was given by McMillan JA (Ag), with whom des Iles and Warner JJA agreed. He treated the expression "tenant" in the Land Tenants (Security of Tenure) Act as having a "restricted and specific meaning." Following some English authorities including *Keeves v Dean* [1924] 1 KB 685, he observed,

> "The 'statutory tenant' has no interest in the land but merely a personal right to remain in occupation, a statutory licence so to speak …"

He has no transmissible interest and no contractual tenancy, which is essential to the main part of the definition. He rejected an argument based on the definition's reference to "by operation of law or otherwise" since those words were directed to the manner in which the tenant acquired his interest, and did not detract from the need for an interest under a contractual tenancy. The fact that section 15(1) of the Rent Restriction Act applied the terms of the former tenancy (which were contractual) to the statutory tenancy did not alter the nature of the latter from a statutory relationship to a contractual one.

23. In *Alexander v Rampersad* the facts were rather different in that the tenant had originally been granted a 25-year term and there was a separate point about the meaning of "building lease" in section 3(2)(b) of the Rent Restriction Act. But on the central issue the tenant's arguments were essentially the same as in *De Hayney v Ali*, and the Court of Appeal (Sharma, Hamel-Smith and Warner JJA) followed that decision. An additional point was taken on the definition's inclusion of a tenant at sufferance but Hamel-Smith JA (who gave the leading judgment) rejected it because an occupier who has a statutory right to occupation cannot be a tenant at sufferance.

24. Mr Beharrylal vigorously attacked these decisions as erroneous. He submitted that Mr Ramdass was a tenant at sufferance between 7 January 1981 (when Mrs Bahaw-Nanan acquired the property from her mother) and 1 June 1981 (when the Act came into force), but that submission must be rejected for the reason just mentioned. He relied on the side-note to section 15 of the Rent Restriction Act but (even though a side-note may be admissible as an aid to statutory construction) that was, in the circumstances of this case, clutching at straws. Mr Beharrylal submitted that it would be absurd if a contractual tenant could, simply by the landlord serving a notice to quit (and without any order for possession being sought or made against him), be deprived

of the substantial benefit of a 30-year statutory lease (renewable for a further 30 years and with an option to purchase). But that point cuts both ways. The Act was indeed conferring substantial benefits on tenants, as is marked by its passage through Parliament by the special procedure in section 13 of the Constitution. A statute which deprives landlords of property rights must be construed with some degree of strictness. That is, in the Board's opinion, a further reason for concluding that the Court of Appeal reached the right conclusion in the two cases which are challenged.

A footnote as to compensation

25. As already noted, there is no cross-appeal by Mrs Bahaw-Nanan against the judge's award of compensation of $30,000 in recognition of the fact that the house built by Mr Ramdass's father, although a "chattel house" within the meaning of the Land Tenants (Security of Tenure) Act, is a large, permanent structure which cannot be removed from its existing site. It is not therefore strictly necessary to consider whether the judge had jurisdiction to make that order. But it is worth recording briefly that Mr Roe's researches on this point suggest that the judge had no such jurisdiction. Compensation under section 5(4) of the Land Tenants (Security of Tenure) Act was plainly not in point, leaving section 14(5) of the Rent Restriction Act as the only other possibility. It provides:

> "In granting an order or giving judgment under this section for possession or ejectment in respect of building land, the court may require the landlord to pay to the tenant such sum as appears to the court to be sufficient as compensation for damage or loss sustained by the tenant, and effect shall not be given to such order or judgment until such sum is paid."

At the hearing before the judge there was evidence about the value of the house, and so the parties (and the judge) may have thought that section 14(5) was in point. All of them must have overlooked that the Rent Restriction Act expired before the judge made his order on 5 July 2004. The relevant facts are (in general) to be determined when proceedings are commenced, but the applicable law is (in general) to be ascertained at the date of judgment: see (in the context of rent restriction legislation) *Hutchinson v Jauncey* [1950] 1 KB 574. Mr Ramdass could not be regarded as having had an accrued right to compensation vested in him when the Act expired.

Conclusion

26. The Board will therefore dismiss the appeal except to the limited extent of directing that the payment of mesne profits (at the rate ordered by the judge) shall run

only from 23 February 2002. The parties have 21 days in which to make written submissions as to costs.