

In the Privy Council

ON APPEAL
FROM THE COURT OF APPEAL OF THE COLONY OF SINGAPORE, ISLAND OF SINGAPORE.

UNIVERSITY OF LONDON
W.C.1.
12 NOV 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

APPELLANTS' CASE

33603

BETWEEN

GUAN SENG KEE LIMITED . . . (Plaintiffs) *Appellants*

AND

BUAN LEE SENG LIMITED . . . (Defendants) *Respondents.*

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Case for the Appellants

1. This is an appeal from the judgment of the Court of Appeal of the Colony of Singapore (Murray-Aynsley, C.J., Singapore, Matthews, C.J., Federation of Malaya, and Brown, J.) dated the 11th day of July 1952 affirming a judgment of the High Court of the Colony of Singapore (Fletcher Rogers, J.) dated the 8th day of March 1952 which dismissed the Appellants' action.

RECORD.

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2. The action was brought by the Appellants as Plaintiffs on the 13th day of September 1950 in the High Court of the Colony of Singapore to recover possession of the premises known as No. 7 Read Street, Singapore, and for mesne profits.

3. The following facts have been agreed between the parties for the purpose of this appeal:—

(A) At all material times prior to the 31st day of August 1950 Harper Gilfillan & Co. Ltd. were the monthly tenants of the Appellants of the premises known as No. 7 Read Street, Singapore, at the rent of \$231.25 per month. The terms of the tenancy contained no prohibition against sub-letting.

(B) The said tenancy was determined by a Notice to Quit expiring on the 31st day of August 1950.

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(C) In January 1947 the said Harper Gilfillan & Co. Ltd. sub-let the whole of the premises to the Respondents on a monthly

tenancy at the rent of \$231.25 per month and the said Harper Gilfillan & Co. Ltd. were not at any material time thereafter in occupation of the premises.

(D) The Respondents are and at all material times since January 1947 have been in occupation of the premises.

4. The following definitions are contained in section 2 of the Control of Rent Ordinance (No. 25 of 1947) :—

“ ‘ landlord ’ means the landlord of premises in respect of which a
 “ tenancy exists and includes the landlord of a statutory tenant
 “ and in the case of sub-tenancy a tenant who sub-lets the 10
 “ premises or any part thereof ;

“ ‘ tenancy ’ means any lease, demise, letting or holding of premises
 “ whether in writing or otherwise, by virtue whereof the
 “ relationship of landlord and tenant is created, but does not
 “ include the letting or hiring of furnished rooms with board ;

“ ‘ tenant ’ means the tenant of premises in respect of which a
 “ tenancy exists and includes a statutory tenant and in the
 “ case of a sub-tenancy a sub-tenant to whom the premises or
 “ any part thereof is sub-let.”

Section 14 (1) (omitting immaterial words) and sections 15, 16 and 17 of 20 the same Ordinance are respectively as follows :—

“ 14.—(1) No order or judgment for the recovery of possession
 “ of any premises comprised in a tenancy shall be made or given
 “ except in the following cases, namely :—

“ (i) where the tenant or any member of his family is not in
 “ occupation of the premises or any part thereof ;

“ 15.—(1) No judgment or order for recovery of possession
 “ shall be enforced as against the sub-tenants (if any) of the tenant
 “ of the premises, where the tenant was not prohibited from sub- 30
 “ letting by the terms of his tenancy ; and every such judgment
 “ or order shall declare whether it may be enforced as against such
 “ sub-tenants or not.

“ (2) Any sub-tenant against whom such judgment or order is
 “ not enforceable shall, if he remain in possession after notice of
 “ the judgment or order has been served on him, cease to be a
 “ sub-tenant of the tenant and become a statutory tenant of the
 “ landlord in respect of the premises comprised in his sub-tenancy.

“ 16. The following persons are statutory tenants under this
 “ Ordinance, namely—

“ (A) any tenant of premises who remains in possession thereof 40
 “ 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 ;

“ (B) any sub-tenant becoming a statutory tenant under and
 “ by virtue of the provisions of subsection (2) of section 15.

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

“ (A) he shall be deemed to hold as tenant from month to
 “ month, and subject thereto, shall observe and be entitled
 “ to the benefit of all the terms and conditions of his
 “ original tenancy or sub-tenancy as the case may be,
 “ so far as the same are consistent with the provisions of
 “ this Ordinance and with a holding from month to
 “ month :

“ Provided that in the case of a sub-tenant becoming
 “ a statutory tenant under and by virtue of the provisions
 “ of subsection (2) of section 15, such a statutory tenant
 “ shall in addition hold the premises subject to any
 “ subsisting restrictive covenants contained in the terms
 “ and conditions of the tenancy between the landlord and
 “ the tenant ;

“ (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 ;

“ (c) he shall be subject to all the rights and powers conferred
 “ on a landlord under and by virtue of the Distress
 “ Ordinance.”

5. The principal question involved in this appeal is as to the effect
 of the statutory provisions quoted above on the position of a sub-tenant
 where the interest of the mesne landlord has been determined, but no
 order for possession has been made so as to bring into operation section 15 (2)
 of the same Ordinance. It was common ground between the parties at
 the trial and in the Court of Appeal that section 15 (2) did not have any
 application to the facts of this case.

6. Fletcher Rogers, J., after hearing the evidence and arguments of
 counsel for both parties held that the definition of the word “ tenant ”
 as quoted above in section 2 of the Ordinance includes in the case of a
 sub-tenancy a sub-tenant to whom the premises or any part thereof is
 sub-let and came to the conclusion that the Respondents were tenants
 and as such entitled to the protection of section 14 of the said Ordinance.
 He further held that when the interests of Harper Gilfillan & Co. Ltd.
 ceased as from the 31st day of August 1950 the Respondents began to
 hold as tenants immediately of the Appellants and that that being so he
 could find no reason which would justify him in holding that the
 Respondents were dis-entitled to the protection of the said section 14 as
 from the 31st August 1950. He accordingly gave judgment for the
 Respondents with costs on the higher scale.

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pp. 3-4.

7. The Appellants appealed to the Court of Appeal for the Colony of Singapore (Murray-Aynsley, C.J., Singapore, Matthews, C.J., Federation of Malaya, and Brown, J.), and the appeal was heard on the 27th day of June 1952.

8. Counsel for the Appellants argued in the Court of Appeal that section 15 (1) (of the said Ordinance) was entirely negative and that it was from subsection (2) of the same Ordinance which did not apply in this case that the rights of sub-tenants were derived. He argued that the definition of tenancy above quoted was so far as material to this case declaratory of the common law and that nothing therein contained created an artificial relationship between a superior landlord and a sub-tenant for the purpose of the Ordinance. He went on to say that this was made clear by the wording of the definition of landlord which extended the meaning of that word to cover in the case of a sub-tenant a tenant who sub-lets the premises or any part thereof. He emphasised that whilst subsection (5) of section 5 of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (10 & 11 Geo. V, c. 17) was substantially reproduced by section 15 of the Ordinance there was nothing corresponding to subsection (3) of section 15 of the same Act. He argued that the learned Judge was therefore wrong in holding that the Respondents became statutory tenants under section 16 (a) of the said Ordinance because that section was complementary to section 14 of the Ordinance and section 14 did not apply since the premises were not comprised in a tenancy as defined in the Ordinance. 10 20

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9. Counsel for the Respondents argued in support of the reasoning of the learned Trial Judge.

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10. The judgment of the Court of Appeal dismissing the appeal of the Appellants was delivered on the 24th day of July 1952. Murray-Aynsley, C.J. (Singapore) (with whom Matthews, C.J., Federation of Malaya, and Brown, J., concurred) in giving judgment said that the matter was not free from obscurity. It was clear that the Ordinance was intended to protect among others sub-tenants and that when a judgment was obtained against the head tenant the position was quite clear. It could not be supposed that this protection was intended to be limited to such cases. He stated that he agreed with the conclusions reached by the learned Trial Judge and with his reasons. 30

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11. The Appellants' appeal to Her Majesty in Council was on the 8th day of December 1952 admitted by Murray-Aynsley, C.J. (Singapore) in Chambers.

12. The Appellants submit that the judgments of the learned Trial Judge and of the Court of Appeal should be reversed and judgment given for the Appellants for possession of the said premises and mesne profits at the rate of \$231.25 per month from the 1st day of September 1950 until judgment or possession for the following among other 40

REASONS

- (1) BECAUSE the said Ordinance does not confer any rights on sub-tenants in cases where no judgment or order for

possession is made against the mesne landlord and in such circumstances the sub-tenants have no rights at common law.

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- (2) BECAUSE the definitions of " landlord," " tenant " and " tenancy " in the said Ordinance do not create any relationship between a superior landlord and a sub-tenant equivalent to the relationship of landlord and tenant.
- (3) BECAUSE section 16 (a) of the said Ordinance does not apply since the Respondents were not persons who could not by reason of the provisions of the Ordinance be deprived of possession since as between the Appellants and the Respondents the premises were not " comprised " in a tenancy " for the purpose of section 14 (1) of the Ordinance.
- (4) BECAUSE it is a condition precedent to the application of section 14 (1) of the said Ordinance that the relationship of landlord and tenant should formerly have existed between the parties.
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- (5) BECAUSE the construction of the word " tenant " in paragraph (a) of section 16 adopted by the learned Trial Judge and the Court of Appeal renders meaningless section 15 and paragraph (b) of section 16 of the Ordinance and a construction which involves as a necessary consequence the excision of sections of a Statute necessarily does violence thereto.
- (6) BECAUSE the words " sub-tenant " in paragraph (b) of section 16 are used in contradistinction to the word " tenant " in paragraph (a) of that section.
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- (7) BECAUSE it is an absurdity that a sub-tenant becoming a statutory tenant by virtue of subsection (2) of section 15 but not otherwise should by virtue of the proviso to paragraph (a) of section 17 be subject to any subsisting restricting covenants contained in the terms and conditions of the tenancy between the landlord and the tenant.
- (8) BECAUSE the definition of " tenant " contained in section 2 of the Ordinance does not include a " statutory " tenant " since a comprehensive definition of that term is contained in section 16 of the Ordinance.
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- (9) BECAUSE in the absence of words leading to that conclusion it is wrong to hold that the legislature must have intended to protect all sub-tenants because they have made specific provision in the case of sub-tenants against whose immediate landlord an order for possession has been made.

L. G. SCARMAN.

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Singapore, Island of Singapore.*

BETWEEN

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(Plaintiffs) . . . *Appellants*

AND

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Case for the Appellants

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