

5, 1969

No. 35 of 1966

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL FROM

THE FEDERAL COURT OF MALAYSIA

HOLDEN AT SINGAPORE

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 111 of 1964

SINGAPORE HIGH COURT SUIT NO. 368 of 1961

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 9 MAR 1970
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N : 1. SYED AHMED BIN ALWEE AL-JUNIED
2. DATO SYED AHMAD BIN MOHAMED ALSAGOFF
3. SYED MOHAMED BIN ALI ALSAGOFF
(Trustees of the estate of Syed Ahmed bin
Abdulrahman Alsagoff, deceased)

Appellants

- and -

MUCHOOL KHANUM RESHTY (Widow)

Respondent

AND B E T W E E N: MUCHOOL KHANUM RESHTY (Widow)

Appellant

- and -

1. SYED AHMED BIN ALWEE AL-JUNIED
2. DATO SYED AHMAD BIN MOHAMED ALSAGOFF
3. SYED MOHAMED BIN ALI ALSAGOFF
(Trustees of the estate of Syed
Ahmed bin Abdulrahman Alsagoff,
deceased)

Respondents

CASE FOR THE RESPONDENT/APPELLANT

1 AUG 1968

LINKLATERS & PAINES,
59/67, GRESHAM STREET,
E.C.2.

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CASE FOR THE RESPONDENT/APPELLANT

Record

1. These are Appeals from a Judgment and Order
of the Federal Court of Malaysia (Appellate Jurisdiction)

Record

p.65

dated 6th April 1966 allowing in part an appeal

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p.51

by the Respondent/Appellant from a Judgment of the High Court of Singapore dated 7th November 1964.

2. The Respondent/Appellant was the Defendant in the action and the Appellant before the Federal Court and is in this Case referred to as the Defendant. The Appellants/Respondents were the Plaintiffs in the action and the Respondents before the Federal Court and are in this Case referred to as the Plaintiffs.

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3. The Plaintiffs claimed possession of certain land let to the Defendant and mesne profits from the date of expiry of their notice to quit. The land comprised about 550 acres and contained a large number of buildings occupied by about 2100 subtenants of the Defendant. The Plaintiffs claimed that they were entitled to possession by virtue of provisions of the Control of Rent Ordinance (Chapter 242 of the Laws of the Colony of Singapore, 1955). The Defendant claimed the protection of the Ordinance and contested the Plaintiffs' right either to possession or to mesne profits. The Defendant also counterclaimed for repayment of rent paid in excess of the recoverable or standard rent prescribed by the Ordinance.

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- A 4. The trial Judge held -
- (a) That Section 15 (1) (g) of the Control
 of Rent Ordinance was applicable and the
 Plaintiffs were entitled to an order for
 possession thereunder.
- B (b) That the Defendant became a trespasser from
 the date when the notice to quit expired.
- (c) That the Plaintiffs were entitled from such
 date to mesne profits equal to the total
 amount of rents received by the Defendant
 from her subtenants.
- C (d) That the Defendant was entitled to recover
 excess rents for the period beginning six
 years before the issue of the writ (the
 statutory limitation period) and ending on
 the date of expiry of the notice to quit,
 but, being a trespasser, was not entitled
 to recover such excess rent paid between
 the latter date and the date of judgment.
- D 5. On appeal by the Defendant the Federal Court
 dismissed the appeal so far as it concerned the
 order for possession but allowed the appeal so far
 as it related to the finding that the Defendant
 was a trespasser or that the Plaintiffs were
 entitled to an order for payment of mesne profits.
- E 6. The principle questions to be decided on
 these Appeals are whether as a matter of law in

Record

the circumstances of this case:-

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(a) Section 15 (1) (g) of the Control of Rent Ordinance is applicable.

(b) The Defendant became a trespasser when the Plaintiffs' notice to quit expired.

(c) In the calculation of mesne profits (if any) there should be deducted from the gross amounts of rents received by the Defendant the expenses of management and collection and the taxes payable by the Defendant on such rents.

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7. The relevant provisions of the Control of Rent Ordinance are as follows :-

Section 2

"In this Ordinance except where the context otherwise requires:-

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"premises" means any dwelling house, flat, factory, warehouse, office, counting house, shop, school and any other building whether of permanent or temporary construction in which persons are employed or work and any part of any such building let or sublet separately and includes any land whereon any such building is or has been erected with the consent of the landlord but does not include any new building built or completed after the 7th day of September, 1947;

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A "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;

B Section 3

(1) Save as hereinafter in this Ordinance provided it shall be unlawful for any landlord to increase or attempt to increase or to receive or recover a rent in respect of any tenancy of premises in excess of the rent fixed by an order of the Board, or, if no order has been made, in excess of the standard rent.

C Section 14

No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the cases set out in this Part of this Ordinance.

D Section 15

(1) In the case of all premises such an order or judgment as is referred to in section 14 of this Ordinance may be made in any of the following cases, namely :-

.....

E (g) where the tenant having sublet the premises or part thereof receives in respect of such

subletting, rents (excluding any municipal services paid by the tenant) for any sublet part of the premises in excess of the recoverable rent for that part, or rents which exceed in the aggregate one hundred and ten per centum of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him;

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Section 27

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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; and
- (b) any sub-tenant becoming a statutory tenant under and by virtue of any of the provisions of this Ordinance.

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Section 29

The provisions of subsection (4) of section 17 of the Civil Law Ordinance shall not apply to a tenant of premises to which this Ordinance applies.

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A Section 17 (4) of the Civil Law Ordinance
(Chapter 24) is as follows :-

Every tenant holding over after the
determination of his tenancy shall be
chargeable, at the option of his landlord,
B with double the amount of his rent until
possession is given up by him or with
double the value during the period of
detention of the land or premises so
detained, whether notice to that effect
C has been given or not.

8. The Plaintiffs commenced THE PRESENT SUIT by
Writ of Summons issued on 8th April 1961 claiming - p.2

- (1) Possession of the lands therein referred to.
- (2) Mesne profits.
- D (3) Damages for breach of covenant.
- (4) Costs.

9. In their Further Amended Statement of Claim p.2
the Plaintiffs pleaded a lease dated 28th September
1953 under which they or their predecessors in lease
separately
produced.

E title as Trustees of the Estate of Syed Ahmed bin
Abdulrahman Alsagoff let the land in question to the
Defendant for a term of 5 years from 1st April 1953
at the monthly rent of \$ 1300 payable monthly in
arrear on the first day of each month. By Paragraph
F 7 they alleged that at the expiration of the lease p.4.L.5.

Record

the Defendant remained in possession as a tenant at will or from month to month paying a monthly rent of \$ 1400. By Paragraphs 11 (a) and 12 they alleged that the Defendant had been receiving rents from sub-tenants exceeding \$ 3000 per month or rents more than 110% of the rent she herself was paying to the Plaintiffs. By Paragraph 13 they alleged that the tenancy at will or from month to month was terminated by a Notice to Quit in writing dated 23rd February 1961. And they claimed possession and mesne profits from 1st April 1961.

10. In her Amended Defence and Counterclaim the Defendant claimed protection of the Control of Rent Ordinance and alleged that the respective rents of \$ 1300 and \$ 1400 had been agreed subject to the approval of the Rent Conciliation Board, which had never been obtained. By Paragraph 10A she admitted that she had been receiving rents approaching \$ 3000 per month in respect of certain buildings on the land. By her Counterclaim she pleaded previous leases of the land by the Plaintiffs to her husband and alleged that the standard rent of the land within the meaning of the Ordinance was \$ 750 per month. And she counterclaimed for repayment of excess rent paid between 1st April 1947 and 31st December 1961.

A In their Defence to Counterclaim the Plaintiffs
relied (inter alia) on the Limitation Ordinance.

p.18.L.16

11. Much of the pleadings and evidence were
devoted to allegations and denials of breach of
covenant on the part of the Defendant by unauthor-
B ised subletting and permitting the erection of
unauthorised buildings on the land. The Trial
Judge made no finding on this issue and it was not
raised before the Federal Court. The pleadings
also contained allegations by the Plaintiffs that
C the land was not subject to the Control of Rent
Ordinance and that the standard rent had not been
exceeded because of the number of buildings
completed after September 1947, to which the
Ordinance does not apply, and allegations by the
D Defendant that rents received in excess of 110% of
her rent related to buildings to which the
Ordinance did not apply. The Trial Judge impliedly
found that the land comprised in the lease fell
within the definition of "premises" in Section 2
E of the Ordinance and this was conceded before the
Federal Court, although the Defendant contended
before both Courts that the word "premises" in
Section 15 of the Ordinance should be given a
more restricted meaning than in Section 2 and that
F accordingly the Trial Judge was wrong in holding

p.66.L.3

Record

that Section 15 (1) (g) was applicable to the land the subject of the action. A

12. The three Plaintiffs as well as two surveyors gave evidence on the Plaintiffs' behalf. Their evidence (so far as material) was that the land had been let to the Defendant's husband B

p.24.L.23. since 1927 as an investment, that there had been subtenants right from 1927, that the number of

p.22.L.22. subtenants grew so that about 15,000 or more
p.25.L.4. people now lived on the land, that they had given permission for the erection of buildings on the C

land until March 1958 when they had obtained a Court Order that they should not accede to further requests for such permission. Before the 1953 lease was granted and again after its

p.27.L.6 expiry increases of rent were agreed subject to D
p.84.L.1 approval by the Rent Conciliation Board, but it
p.100.L.23.

p.27.L.19. was conceded that such approval had not been
29. sought or obtained. The Plaintiffs sought

p.26.L.19. possession because 1961 was the year for distri-

p.32.L.12. bution of the deceased's estate, because the E

beneficiaries had drawn their attention to breaches of the Defendant's lease and because the Defendant was collecting a fantastic sum and exploiting

p.33.L.2. their estate, and because they wanted to collect rent themselves, but it was admitted that the F

land was difficult to administer or control and

A that illegal buildings could go up practically in one night or in a few days. One of the surveyors stated that generally the area of each building was not demarcated, the area let to each subtenant was not defined, there were no marking or boundary stones and it would be a monumental task to demarcate the area. p.30.L.25.

13. The Defendant's son gave evidence on her behalf. He stated that he had been concerned with the administration of the land since 1933. He said that there were now about 2100 tenants, most of them paying ground rent, but a few paying house rent. The administration of the land was a full time job. He was paid \$ 550 per month by his mother. There were two full time rent collectors paid \$ 200 and \$ 160 per month respectively and a part time clerk who got \$ 100 per month. It was not possible to tell where one tenant's land began and ended. It was not easy to collect rents. About 30% of the tenants were in arrears. The range of rents was from \$ 1 to \$ 22.50 per month, but there were two of \$ 62.50 and one of \$ 25. The witness gave the following figures of gross and net income from the estate for the year 1960:- p.40.L.25
p.41.L.39
p.42.L.4.
p.42.LL.
5-10.

E In 1960 the defendant's expenses for administration of estate were \$ 15,669.95. p.43.L.2.
p.43.LL.
12.21.

F

Record

She paid \$ 16,800 as rent in that year. A
She paid \$ 3,316.85 as assessment.
She paid \$ 6,076.70 as income tax. This
totals \$ 41,863.50. The total income was
\$ 67,233.60 leaving a balance of \$ 25,370.10.

Ex.D13 The Defendant tendered her ledger and also called B
as witnesses two of her subtenants.

p.51.L.12. 14. In his reserved judgment the Trial Judge
p.52.L.44. (Choor Singh J.) stated that "It was conceded by
counsel for the defendant that the defendant does
in fact recover rent in excess of 110% of the C
rent she pays to the plaintiffs." He then
discussed and rejected the Defendant's submission
that the word "premises" should not be construed
for the purposes of Section 15 (1) (g) to include
a letting of 550 acres of land occupied by some D
2100 tenants and organised by the tenant as a
rent collecting business. He expressed the
following opinion :

p.54.L.12. In my opinion, for the purposes of
section 15 (1) (g) of the Ordinance, a piece E
of land which consists of two or more
contiguous lots as in the present case and
which forms the subject of a single letting
and all buildings erected thereon should
be considered together as a whole, and the F
fact that the land has a very large area

A or has numerous buildings on it does not take
it out of the ambit of section 15 (1) (g).
After citing three local decisions he reached
the following conclusion:

B On the facts of this case I hold that the
land demised to the defendant is "premises"
within the meaning of Section 15 (1) (g)
of the Ordinance. The defendant has
contravened section 15 (1) (g) and the
plaintiffs are therefore entitled to
C possession of the premises forthwith
subject to the rights of the sub-tenants.

p.56.L.40.

15. On the claim for mesne profits the Trial
Judge's finding that the Defendant became a
trespasser and not a statutory tenant as soon
D as the notice to quit expired is contained in
the following passage:

E In my opinion, on the facts, it is not
correct to say that the defendant became a
statutory tenant on 1st April 1961 when she
failed to deliver up possession upon the
expiry of the notice to quit. The defendant
could be regarded as a statutory tenant on
1st April 1961 only if on that date there
were no grounds for ejecting her. It is
F clear law that if at the moment when the
contractual tenancy is determined, the case

p.57.L.28.

Record

falls within one of the exceptions set out in section 15 of the Ordinance, the landlord is not prevented from obtaining possession by the provisions of the Ordinance and therefore the tenant in such a case does not become a "statutory tenant";

See Ida Fernandez v. Murugiah, (1950)

M.L.J. 83 and K.S. Mohamed Ismail v. Choo Pin

(1954) M.L.J. 183. In the present case, at the moment of the determination of the contractual tenancy, the defendant was not a person protected against deprivation of possession because she had contravened section 15 (1) (g) of the Ordinance and thus she did not at that moment become a statutory tenant. I therefore hold that the defendant became a trespasser as from 1st April 1961 and is liable to pay mesne profits.

p.59.L.22 In assessing the mesne profits the Trial Judge held that the Plaintiffs were entitled to all the rents of the sub-tenants during the period of holding over less the rent paid by the Defendant in respect of that period. Counsel
p.50.L.22. for the Plaintiffs conceded that the Defendant was entitled to deduct the costs of collection and the Trial Judge said that he would hear

A further argument on whether the Defendant could also deduct income tax.

16. On the Counterclaim the Trial Judge stated that it was not in dispute that the standard rent of the premises was \$ 750 per month and that "it was clearly within the contemplation of the parties that the premises were subject to the Ordinance". Accordingly he held that the Defendant was entitled to recover the excess rents paid, subject to the Limitation Ordinance and excluding the period when, as he held, the Defendant was a trespasser. It was not in dispute that the Defendant had paid rent up to date.

p.60.L.1.
p.60.L.17.

p.60.L.38.

17. The Defendant appealed on the grounds that the Trial Judge had erred in law in holding -

(1) That the land was premises within Section 15 (1) (g).

(2) That the Plaintiffs were entitled to recover possession pursuant to Section 15

(1) (g).

(3) That the Defendant was a trespasser when holding over and paying rent.

(4) That the mesne profits payable in respect of land subject to the Ordinance were damages for trespass.

(5) That the damages for trespass were

p.64-5.

Record

the aggregate amounts received by the Defendant from sub-tenants. A

(6) That the Defendant was not entitled to recover excess rent paid while holding over.

p.65.L.21. 18. The Judgment of the Federal Court, with which Tan Ah Tah J. agreed, was delivered by Wee Chong Jin, C.J. Singapore. The Court rejected the argument based on the meaning of the word "premises" in the context of this case and also rejected, in the following passage, an argument that Section 15 (1) (g) had no application where the tenant was paying more than the recoverable rent: B C

p.68.L.40 Another argument was pressed before us why on the facts of this case the Respondents were not entitled to rely on section 15 (1) (g). It is contended that the trial judge, having found that the standard rent was \$ 750/- p.m. and that the Respondent had thereby, in receiving rent of \$ 1,300 p.m. from 8.4.55 to 31.3.58 and \$ 1,400/- p.m. from 1.4.58 to 31.3.61 without obtaining the prior sanction of the Rent Conciliation Board, contravened the provisions of section 3 of Ordinance, he D E F

A had erred in law in making an order for possession under section 15 (1) (g). I am not impressed by this argument. On the facts the increases, albeit contrary to section 3, were freely negotiated.

B 19. On the question of mesne profits the Federal Court, applying Cruise v. Terrell (1922) 1 K.B. 664 and Tan Khio Boei v. Ban Hin Lee Bank Ltd. (1964) M.L.J. 71, held that the Defendant, until an order for possession had been made against her, could not p.74.L.16.

C be treated as a trespasser and was in the position of statutory tenant under Section 27 of the Ordinance; to hold otherwise would mean that the p.74.L.24. tenant would be at the risk of having to pay damages for trespass if the landlord made out a case for possession under Section 15.

D 20. It is submitted that the Federal Court were wrong in rejecting the argument referred to in the passage from their Judgment quoted in Paragraph 18 above. Both as a matter of wording and as a matter of principle Section 15 (1) (g) should be E confined to cases where the landlord has himself been receiving only the lawful rent. As to the wording, the relevant part provides that an order for possession may be made where the tenant F receives "rents which exceed in the aggregate

Record

one hundred and ten per centum of the recoverable rent paid by the tenant himself". In this case the rent paid by the tenant was not the recoverable rent but nearly double the recoverable rent and the tenant has been given judgment for repayment of the excess. It is submitted that the Paragraph by its language excludes a case where the "rent paid by the tenant" is not the recoverable rent. As to principle it is submitted that a ground for possession based on an excess of rent paid to the tenant should not be available to a landlord who is himself receiving from his tenant an illegal excess of rent.

21. It is submitted that the Federal Court were right in setting aside the Trial Judge's order for payment of mesne profits, both for the reasons stated in their Judgment and for the following reason. Section 14 of the Ordinance provides that no order or judgment for possession of premises comprised in a tenancy shall be made or given except in cases set out in Part III. Section 15 gives 12 cases in which such an order may as a matter of discretion be made. But it is wrong to say that if a landlord has brought his claim within one of the Paragraphs of Section 15,

A the tenant has "contravened" that Paragraph and
has therefore failed to become or ceased to be a
statutory tenant. Section 27 (a) of the Ordinance
applies to any tenant who because of the Ordinance
cannot be evicted by his landlord; it does not
B mean that a tenant against whom a Court Order for
possession is made is not until that moment a
statutory tenant. It is submitted that, in so far
as they decided to the contrary, the two cases
relied upon by the Trial Judge and referred to in
C the Judgment of the Federal Court were wrongly
decided and should be overruled. It is further
submitted that Section 29 of the Ordinance also
applies to any tenant of premises within the
Ordinance until a possession order is made against
D him and that until such time such a tenant is under
the duty prescribed by Section 28 to pay only the
standard rent for the premises. It is submitted
that as a consequence rent in excess of the
standard rent may be recovered by a statutory
E tenant.

22. If on the other hand the Plaintiffs are
entitled during the relevant period not to the
recoverable rent for the premises but to mesne
profits for their occupation, then it is submitted
F that the Defendant is entitled to deduct from the

Record

gross rents received from her subtenants A
both the expenses of management and collection,
the property tax payable on the property and
the income tax payable on the rents.

23. The Defendant respectfully submits that
the Cross-Appeal should be allowed and the B
action dismissed with costs and that the Appeal
should be dismissed with costs for the
following among other

R E A S O N S

- (1) Because no order for possession of premises C
subject to the Control of Rent Ordinance
can or should be made under Section 15 (1)
(g) in a case where the rent paid by the
tenant was not the recoverable rent but a
rent which it was unlawful for the D
landlord to receive.
- (2) Because on the expiry of the notice to quit
the Defendant became a statutory tenant
under the Control of Rent Ordinance and was
not a trespasser. E
- (3) Because, even if she was not a statutory
tenant, the Defendant ought not to be
treated as a trespasser before an order for

Record

possession under the Ordinance has been made. A

(4) Because, even if she was a trespasser, in computing mesne profits based on the rents received by the Defendants there should be deducted the costs of management and collection, the property tax paid or payable on the property and the amount of income tax paid or payable in respect of the rents. B

(5) Because the Defendant is entitled to recover rent paid in excess of the standard or recoverable rent in respect of the period beginning six years before the issue of the writ and ending with the making of the possession order. C

JOSEPH DEANS.

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