

5, 1967

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)

UNIVERSITY OF LONDON  
INSTITUTION OF  
STUDIES  
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L SQUA  
LONDON, W.C.1

FEDERAL COURT CIVIL APPEAL No. 111 of 1964  
SINGAPORE HIGH COURT SUIT No. 368 of 1961

B E T W E E N :

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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 -

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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 ON BEHALF OF THE APPELLANT TRUSTEES  
OF THE ESTATE OF SYED AHMED BIN ABDULRAHMAN  
ALSAGOFF DECEASED

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1. These are two Appeals from a Judgement of the Federal Court of Malaysia (Appellate Jurisdiction) given by two Judges of the Court in accordance with Section 42 of the Courts of Judicature Act, 1964, and by consent of the parties hereto (Wee Chong Jin C.J., and Tan Ah Tah, F.J.) given on the 6th April, 1966,

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whereby the Court allowed in part an appeal brought by Muchool Khanum Reshty, Widow, (hereinafter called "the Respondent") against a Judgment of the High Court of Singapore (Choor Singh J.) given on the 7th November, 1964 in an action brought by the said Trustees (hereinafter called "the Appellants") against the Respondent for possession of certain lands and buildings and mesne profits from the 1st April, 1961. The Federal Court dismissed the Respondent's Appeal against the Judgment of Choor Singh J. in so far as it adjudged and ordered that the Appellants do recover against the Respondent possession of certain land and buildings thereon, and allowed the said Appeal against the said Judgment in so far as it adjudged and ordered that the Appellants do recover against the Respondent mesne profits of the said premises to be assessed.

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2. The Appellants now appeal against the Judgment of the Federal Court in so far as it allowed the Respondent's appeal in regard to mesne profits and the Respondent now appeals against the said Judgment in so far as it dismissed her previous Appeal in respect of the order for possession of the land and buildings aforesaid.

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3. The Appellants are the Trustees of the Estate of Syed Ahmed bin Abdulrahman Alsagoff deceased. As early as 1927 the then Trustees of the said Estate had demised the premises hereinafter mentioned to the Respondent's husband under various leases. The standard rent of the premises became \$750 per month on the 7th September, 1947. On the 13th October, 1952, the Respondent's husband died and after certain negotiations by a lease dated the 28th September, 1953, the then Trustees of the said Estate demised to the Respondent certain lands in the District of Paya Lebar in the Island of Singapore more particularly described in the Schedule to the said lease for a term of 5 years from the 1st April, 1953, at the monthly rent of \$1,300. Although it was intended to obtain the approval of the Rent Conciliation Board in respect of the said rent of \$1,300 per month such approval was not in fact obtained.

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| 10 | 4. The said demised land comprised an area of some 550 acres and by the time of the trial before Choor Singh J. some 2,100 sub-tenants occupied temporary buildings on the said demised land paying to the Respondent ground rents ranging from ₹1 to ₹62.50 per month. Such buildings as were erected prior to March 1958 were erected with the Appellants' assent and at the expense of the sub-tenants, but in March 1958 the Appellants obtained an Order of Court which forbade the erection of new temporary buildings on the land. |               |
| 20 | 5. After the expiration of the said lease on the 31st March, 1958, the Respondent was accepted by the Appellants as a tenant from month to month at a monthly rent of ₹1,400. It was intended to obtain the approval of the Rent Conciliation Board in respect of the said rent of ₹1,400 per month but such approval was not in fact obtained.   | 99            |
| 30 | 6. By Notice to Quit in writing dated the 23rd February, 1961, the Appellants by their Solicitors required the Respondent to deliver up possession of the whole of the premises on the 31st March, 1961. Before and at the time of the expiry of the said Notice to Quit the Respondent had been receiving in respect of the said sub-lettings rents which exceeded in the aggregate 110 per centum of the recoverable rent paid by the Respondent to the Appellants.   | 113           |
|    | 7. The Control of Rent Ordinance 1953 (No.22 of 1953) contains the following provisions:-   |               |

Part III

RECOVERY OF POSSESSION

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.

40 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, ....

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(g) where the tenant having sub-let the premises or part thereof receives in respect of such sub-letting, 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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Part IV

STATUTORY TENANTS

Section 27 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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8. By Writ of Summons the Appellants claim inter alia, possession of the said premises and mesne profits. By a Further Amended Statement of Claim re-dated 12th February, 1964, the Appellants alleged inter alia that the Respondent had let buildings (constructed since the 7th September, 1947) on the said land or alternatively had let vacant land comprised in the said premises at a total rent exceeding \$3,000 per month, that at all material times the Respondent had been receiving from the said sub-tenants more than 110 per centum of the rent which she herself paid to the Appellants, and that in the premises the Respondent was not entitled to the protection of the Control of Rent Ordinance. By the said Further Amended

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Statement of Claim the Appellants claimed inter alia possession of the land and buildings erected thereon and mesne profits from the 1st April, 1961, until Judgment or possession.

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9. By her Amended Defence and Counterclaim dated 11th March, 1964, the Respondent inter alia (i) denied that the Appellants were entitled to possession of the premises and claimed the protection of the Control of Rent Ordinance, (ii) contended that the rent recovered by her in respect of buildings constructed (including buildings demolished and reconstructed) since the 7th September, 1947, approached but did not on average exceed \$3,000 per month, (iii) denied that any part of the monthly sum so paid to her was paid in respect of vacant land, and (iv) claimed \$95,850 by way of excess rent paid since the 1st April, 1947.
10. By their Reply and Defence to Counterclaim dated 6th July, 1962, the Appellants inter alia admitted that those buildings constructed on the premises before the 7th September, 1967, had a standard rent of \$740 per month and contended that any claims for excess rent collected before the 7th May, 1956, was barred by the Limitation Ordinance.
11. The said action came on for hearing before Choor Singh, J. in the High Court of Singapore on the 18th, 19th, 23rd and 24th days of March, 1964, and judgment was reserved until the 7th November, 1964. The learned Judge adjudged that the Appellants should recover possession of the premises from the Respondent forthwith, that the judgment should not be enforced against the sub-tenants, that the Appellants should recover against the Respondent mesne profits to be assessed by means of an Inquiry to be held before the Registrar from the 1st April, 1961 to the 7th November, 1964, less the amount paid by the Respondent to the Appellants by way of rent in respect of the said period. The learned Judge further adjudged that the Respondent should recover against the Appellants the sum of \$43,071.66 being the excess rent paid by her for the period 8th April, 1955 to the 31st March, 1961. The

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learned Judge further ordered that the Appellants should recover against the Respondent their costs of the claim in the action and of and incidental to the Inquiry before the Registrar and consequent thereon and that the Respondent should recover against the Appellants her costs of the Counterclaim.

56 12. Following a concession made by Counsel for the Respondent that the Respondent did in fact recover rent in excess of 110 per centum of the rent she paid to the Appellants Choor Singh, J. construed the word "premises" in Section 15(1)(g) of the Control of Rent Ordinance as applicable to the land demised to the Respondent, and further held that the Respondent, by recovering rent as aforesaid from the sub-tenants had contravened the said Section and he considered it necessary to deal with all the grounds on which the Appellants had claimed possession. He, therefore, held that the Appellants were entitled to possession of the premises. Choor Singh, J. also held that the Respondent became a trespasser on the 1st April, 1961, following the expiry of the Notice to Quit on the 31st March, 1961, and that the Appellants were entitled to mesne profits as damages for trespass being all the rents collected by the Respondent from her sub-tenants between the 1st April, 1961 and the 7th November, 1964. The learned Judge rejected the Respondent's contention that she became a statutory tenant under Section 27(a) of the Control of Rent Ordinance following the expiry of the Notice to Quit. 10 20 30

57 13. In regard to the Counterclaim and following a further concession by Counsel for the Respondent that the Limitation Ordinance was applicable so as to limit the claim for excess rent from the period beginning the 8th April, 1955, the learned Judge gave judgment for the Respondent for \$43,071.66 on the basis that at all material times the standard rent was \$750 per month and that rent ceased to be payable on the expiry of the Notice to Quit on the 31st March, 1961. 40

61 14. The Respondent appealed against the judgment to the Federal Court of Malaysia, the

said Appeal being heard on the 27th and 28th days of April, 1965. Judgment was reserved until the 6th April, 1966, and was given by Wee Chong Jin, C.J.

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10 15. In giving judgment the learned Chief Justice stated that both parties by their pleadings and before the Federal Court were agreed that the land the subject matter of the Action was "premises" within the definition of Section 2 of the Control of Rent Ordinance, and therefore was controlled premises. He further stated that at the trial the Respondent's Counsel had conceded she had been receiving rents in excess of 110 per centum of the rent she paid to the Appellants. The learned Chief Justice rejected the argument of the Respondent that the premises demised to her were not "premises" within the meaning of Section 15(1)(g) of the Control of Rent Ordinance. Accordingly  
20 the learned Chief Justice upheld part of the judgment of Choor Singh, J. and decided that the Appellants were entitled to possession of the premises by reason of the Respondent's contravention of Section 15(1)(g) of the Control of Rents Ordinance.

30 16. The learned Chief Justice rejected the argument advanced by the Respondent that the Appellants' acceptance of rent rendered since the expiry of the Notice to Quit constituted a waiver by the Appellants of their right of suing the Respondent as a trespasser.

40 17. The learned Chief Justice, however, construed Section 27(a) of the Control of Rent Ordinance to the effect that a "statutory tenant" includes a tenant who holds over until a Court subsequently decides that the Landlord is entitled to an Order for possession under one of the grounds specified in Section 15(1) of the Control of Rent Ordinance. In the result the learned Chief Justice held that the Respondent was not a trespasser until the possession order was made and the Federal Court allowed the Appeal to the extent that it was held the Appellants were not entitled to recover mesne profits from the Respondent (to be assessed by means of an Inquiry before the Registrar).

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18. By Orders dated the 6th October, 1966, Final Leave was granted both to the Appellants and the Respondent to appeal to the Judicial Committee of Her Britannic Majesty's Privy Council against the Judgment of the Federal Court dated the 6th April, 1966.

19. The Appellants respectfully submit that the Respondent's Appeal against that part of the Order of the Federal Court affirming the Judgment of the Honourable Mr. Justice Choor Singh in so far as it adjudged that the Appellants were entitled to recover against the Respondent possession of the premises should be dismissed for the following among other

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REASONS

(1) BECAUSE the Federal Court rightly construed the Control of Rent Ordinance and in particular Section 15(1)(g) thereof as entitling the Appellants to an Order for possession in the light of the evidence and the Respondent's concession that she had received rents during the tenancy in excess of 110 per cent of the rent which she paid to the Appellants;

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(2) BECAUSE of the other Reasons in the Judgment of the Federal Court.

20. The Appellants further submit that the Order of the Federal Court in regard to mesne profits should be reversed in so far as it allowed the Respondent's Appeal and that part of the trial Judge's Order giving Judgment to the Appellants for mesne profits to be assessed by means of Inquiry should be restored. The said submission is founded upon the following among other

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REASONS

(1) BECAUSE the Respondent's tenancy was determined by Notice to Quit which expired on the 31st March, 1961;

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(2) BECAUSE at the date of and after the



determination of the Respondent's tenancy the Appellants were entitled to deprive her of possession by reason of the provisions of the Control of Rent Ordinance, and in particular Section 15(1)(g) thereof;

- (3) BECAUSE as from the 1st of April, 1961, the Respondent was at all times a trespasser upon the premises;
- 10 (4) BECAUSE the Federal Court were wrong in law in holding that the Respondent was, after the determination of her tenancy by Notice to Quit, a statutory tenant within the definition of Section 27(a) of the Control of Rent Ordinance;
- (5) BECAUSE mesne profits are damages for the tort of trespass and therefore the Appellants are and were entitled to judgment for mesne profits to be assessed for the period and in the manner ordered by the learned trial Judge; and
- 20 (6) BECAUSE Choor Singh, J. was correct in law in holding that the Appellants were entitled to mesne profits from 1st April, 1961 to 7th November, 1964.

30 WHEREFORE THE APPELLANTS HUMBLY PRAY YOUR MAJESTY THAT THE JUDGMENT AND ORDER OF THE FEDERAL COURT OF MALAYSIA DATED THE 6th DAY OF APRIL, 1966, IN SO FAR AS IT DECLARED THAT THE APPELLANTS ARE ENTITLED AGAINST THE RESPONDENT TO POSSESSION OF THE PREMISES BE AFFIRMED AND THAT THE SAID JUDGMENT AND ORDER IN SO FAR AS IT DECLARED THAT THE APPELLANTS ARE NOT ENTITLED TO RECOVER MESNE PROFITS AGAINST THE RESPONDENT BE REVERSED AND THAT YOUR MAJESTY MAY BE GRACIOUSLY PLEASED TO MAKE SUCH FURTHER OR OTHER ORDER INCLUDING ORDERS AS TO COST AS TO YOUR MAJESTY MAY APPEAR FIT AND PROPER.

MARCUS ANWYL-DAVIES

SIMON BROWN

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- Respondents

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CASE ON BEHALF OF THE APPELLANT  
TRUSTEES OF THE ESTATE OF SYED  
AHMED BIN ABDULRAHMAN ALSAGOFF  
DECEASED

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