Privy Council Appeal No. 52 of 1984

Syed Hussain bin Abdul Rahman bin Shaikh Alkaff and Others — *Appellants*

v.

A.M. Abdullah Sahib & Co. — *Respondents*

FROM

THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 31ST OCTOBER 1985

Present at the Hearing:

LORD KEITH OF KINKEL
LORD EDMUND-DAVIES
LORD ROSKILL
LORD GRIFFITHS

*[Delivered by **Lord Keith of Kinkel**]*

This is an appeal against a judgment of the Court of Appeal in Singapore dismissing the appellants' appeal against an order of the High Court which set aside as being a nullity a consent judgment which the appellant had on 18th December 1979 obtained against the respondents in the District Court, and awarded damages to the respondents. The consent judgment was for possession of certain premises in Market Street, Singapore and for mesne profits.

In the District Court proceedings the appellants' statement of claim alleged, in brief, that on some unspecified date the premises had been let on a monthly tenancy to one A.A. Mohamed Maideen, who carried on there a business known as A.M. Abdullah Sahib & Co., that this tenant had died in 1959, that his tenancy had been terminated by notice to quit dated 28th June 1978, that the respondents, a firm, were in occupation of the premises, and that their occupation was that of trespassers and therefore unlawful. The appellants on these grounds claimed judgment against the respondents for possession of the premises, an order requiring the respondents to quit and deliver up vacant possession of the premises

and mesne profits. By their defence the respondents admitted that they were in occupation of the premises, denied that they were trespassers thereon, contended that they were in occupation as lawful tenants, and sought the protection of the Control of Rent Act (Cap. 266). The issue between the parties was thus whether the respondents were in occupation as trespassers or as lawful tenants. In the latter event there could be no doubt but that they were entitled to the protection of the Control of Rent Act. The issue, however, was not fought out, because the respondents agreed to a consent judgment against them, dated 18th December 1979, in these terms:-

"THIS 18TH DAY OF DECEMBER 1979

UPON THIS ACTION coming on for hearing before His Honour Mr. Rahim Jalil in the presence of Counsel for the plaintiffs and for the defendants and upon the defendants admitting the claim of the plaintiffs

AND BY CONSENT IT IS THIS DAY ADJUDGED that there be judgment for the plaintiffs against the defendants for possession of the premises known as No.123A and 123B Market Street, Singapore

AND IT IS ORDERED that the defendants, their servants and agents and all others DO QUIT AND DELIVER UP VACANT POSSESSION of the said premises to the plaintiffs FORTHWITH

And the defendants DO PAY the plaintiffs mesne profits at $102.00 per Mohamedan month as from Rajab 1398 (equivalent to 6.6.78) to date of delivery up of vacant possession

And there be no order as to costs

Provided that there shall be a stay of execution on the judgment above in so far as it relates to delivery of vacant possession until, either,

1) there is government acquisition of the premises and the Collector has called upon the plaintiffs to deliver up possession of the premises to the Collector or other government authority;

or 2) the plaintiffs are selling the premises and have given the defendants notice of 6 months of the intended sale;

or 3) the plaintiffs are developing the site and have given the defendants 6 months notice of the intended development and in-principle plans for the development have been approved

Provided further that should the defendants bring on to the premises any other person (which term includes a firm or company) to occupy any part of the premises in any capacity, other than those already on the premises then the above-stated proviso shall be null and void and the plaintiffs shall be entitled to execute on the whole of the judgment.

DATED this 29TH day of DECEMBER 1979

DY REGISTRAR"

The respondents remained in possession in terms of the consent judgment. On 10th April 1980 the Government of Singapore issued under the Land Acquisition Act (Cap. 272) a notice of intention to acquire the premises compulsorily, and the Collector of Land Revenue later intimated that he required possession by 30th October 1980. The appellants requested the respondents to deliver up possession by that date in accordance with the consent judgment, but they refused to do so and shortly afterwards commenced the present proceedings in the High Court seeking to have the consent judgment set aside on the ground that having regard to the Control of Rent Act the District Court had no jurisdiction to grant it, and also claiming damages. The appellants defended the action on the ground that the respondents, by their agreement to the consent judgment, had admitted that they were trespassers unlawfully in occupation of the premises, but on 11th November 1983 Wahab Ghows J. held that the consent judgment was a nullity and should be set aside and awarded the respondents damages agreed at $50,000. He took the view that the decision of the Court of Appeal in *Nanyang Gum Benjamin Manufacturing (Pte) Ltd v. Tan Tong Woo and Others* [1978] 1 M.L.J. 233 was in point and was binding upon him. The appellants appealed to the Court of Appeal but on 13th April 1984 that Court (T.S. Sinnathuray J., Lai Kew Chai J. and Thean J.) dismissed the appeal. The appellants now appeal with leave of the Court of Appeal to this Board.

The grounds of judgment in the Court of Appeal, delivered on 4th September 1984 by Thean J., were based essentially upon the proposition that the present case was indistinguishable in principle from the *Nanyang* case, *supra*, which must therefore be examined. In that case the Court of Appeal granted a stay of execution on a writ of possession issued in pursuance of a consent judgment. The report of the case does not make at all clear the circumstances under which the consent judgment had been granted. Wee Chong Jin C.J. delivering the *ex tempore* judgment of the Court said at page 233, after referring to the Control of Rent Act and the English cases of *Barton v. Fincham* [1921] 2 K.B. 291: *Thorne v. Smith* (1947)

K.B. 307 and *Peachey Property Corporation Ltd v. Robinson and Another* [1967] 2 Q.B. 543:-

> "We accept the reasoning of the English court that in an action for possession where it is in issue that the premises the subject matter of the action may or may not be controlled premises, the court has no jurisdiction to grant an order for possession unless the facts are placed before the court. The court must be satisfied that it has jurisdiction under the proper sections or paragraphs contained in our Act to grant an order for possession. On the facts of the action before the District Court in 1973 it is clear that the question whether or not the premises in question were controlled premises was in issue and the consent judgment was obtained without prejudice to the position taken by both parties - plaintiffs as well as defendants - one alleging that the premises were not controlled, the other alleging that they were. The consent judgment was for possession of the premises to be surrendered years later.
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> Now, that being the basis on which the writ of possession was issued we are satisfied that the original judgment was a nullity."

In *Barton v. Fincham*, *supra*, the landlord of a dwelling-house subject to the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 had made an agreement with the tenant that in consideration of a payment the latter would give notice to quit and yield up possession on a certain day. The tenant accepted the payment and gave notice to quit but on the appointed day refused to give up possession. The county court judge made an order for possession on the ground, so it would appear, that the agreement was binding on the tenant. The Court of Appeal held that, the house being subject to the 1920 Act, which does not appear to have been disputed, no order for possession could validly be made unless one or other of the conditions contained in section 5(1) of the Act was satisfied, and that the agreement of the parties did not have the effect of enabling an order to be made against the will of the tenant. This was not a case of consent judgment nor one where there was any dispute about the application of the 1920 Act. It is to be observed that Lord Justice Atkin (as he then was) said at page 299:-

> "If the parties before the Court admit that one of the events has happened which give the Court jurisdiction, and there is no reason to doubt the *bona fides* of the admission, the Court is under no obligation to make further inquiry as to the question of fact; but apart from such an admission the Court cannot give effect to an agreement, whether by way of compromise or

> otherwise, inconsistent with the provisions of the Act."

In *Thorne v. Smith*, *supra*, the landlord of a dwelling-house within the Rent Restriction Acts claimed possession under the Acts on the ground that he required the house for his own occupation. The tenant, to whom a representation to that effect had been made by the landlord, did not contest the claim. A consent order was made, the tenant vacated, and the landlord then sold the house with vacant possession. The tenant thereupon claimed and succeeded in obtaining compensation under section 5(6) of the 1920 Act on the ground that the order for possession was obtained by misrepresentation. One of the grounds upon which the claim was resisted was that the order for possession was a nullity in respect that the court had no jurisdiction to make it. In regard to this argument Bucknill L.J. said at page 314:-

> "Before making an order for possession the judge is under a duty to satisfy himself as to the truth if there be a dispute between landlord and tenant, but if the tenant in effect agrees that the landlord has a good claim to an order under the Acts, I think the judge has jurisdiction to make an order for possession under the Act without further inquiry."

Peachey Property Corporation Ltd v. Robinson, *supra*, was a case where a landlord obtained judgment by default for possession against the tenant of a dwelling-house subject to the Acts on the ground that the tenant was substantially in arrears with the rent. The master refused the landlord leave to issue a writ of possession on the ground that the judgment by default was of no effect because no consideration had been given by the court, under section 3 of the Rent and Mortgage Interest Restrictions (Amendment) Act 1933, as to whether it was reasonable to make an order for possession. The Court of Appeal held that he was right to do so.

It is apparent that none of these English cases is warrant for the proposition drawn from them by the learned Chief Justice in the *Nanyang* case, namely that in an action for possession where it is in issue that the premises may or may not be controlled premises, the court has no jurisdiction to grant an order unless the facts are placed before the court. The facts of the case are not made sufficiently clear in the report to enable their Lordships to form a view as to its correctness or otherwise. It may be that when the consent judgment in the *Nanyang* case was made in 1973 there was an unresolved conflict as to whether or not the premises were controlled premises, and that the parties agreed on the consent judgment by way of compromise without prejudice to

their respective positions. In that situation the consent judgment may well have embodied, within the meaning of Atkin L.J.'s words in *Barton v. Fincham*, *supra*, an agreement by way of compromise inconsistent with the provisions of the Act, which should not have been given effect to by the court.

Section 14 of the Control of Rent Act provides that:-

> "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 Act."

There is no restriction upon the jurisdiction of the court if the premises of which possession is sought to be recovered are not comprised in a tenancy. In the present case possession was sought to be recovered upon the ground that the respondents were trespassers upon the premises, and that is plainly the basis upon which the consent judgment proceeded. The passages which have been quoted from the judgment of Atkin L.J. in *Barton v. Fincham*, *supra*, and that of Bucknill L.J. in *Thorne v. Smith*, *supra*, are in their Lordships' view sound authority for the proposition that where the landlord makes a claim for possession based on one of the grounds contained in the Acts, and the tenant in effect admits that the claim is well founded, the judge has no duty to insist *ex proprio motu* that the facts be investigated, and that an order for possession made in such circumstances is valid and effective.

Their Lordships are of opinion that by parity of reasoning where an owner of premises makes a claim for possession based on averments that the occupants' possession is not protected by the Acts, and the defendant in effect agrees that the claim is well founded, then an order for possession made in the proceedings is similarly valid and effective. Special considerations might arise if in subsequent proceedings the defendant established by evidence that his agreement was given in pursuance of a compromise which might have involved his being paid a sum of money. Their Lordships prefer to reserve their opinion as to the legal consequences in such a situation. In the present case the respondents made no attempt to adduce evidence of such a compromise. The respondents through their counsel agreed to the consent judgment, which specifically stated that they admitted the appellants' claim. In their Lordships' opinion that can only mean that they admitted that the appellants' claim was soundly based viz. that their occupation was founded upon no legal title but was as trespassers. The Court of Appeal were unwilling to accept that interpretation, on the ground that the relevant words were words of style

common in consent judgments. That may be so, but it is not a good ground for refusing to give effect to the words in their ordinary and natural meaning. The Court of Appeal also appear to have been much influenced by their view that the respondents would have had a good defence on the merits, but the fact remains that they did not persist with their defence. Essentially, however, the Court of Appeal fell into error in holding that the *Nanyang* case, *supra*, was an authority necessitating the conclusion which they reached.

For these reasons their Lordships allow the appeal and enter judgment for the appellants with costs here and in the courts below.