Privy Council Appeal No. 17 of 1956

Lim Siew Neo - - - - - - - - - - *Appellant*

v.

Pang Keah Swee - - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE COLONY OF SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 9TH DECEMBER, 1957

Present at the Hearing:

LORD REID
LORD SOMERVELL OF HARROW
MR. L. M. D. DE SILVA
[*Delivered by* LORD REID]

This is an appeal from a judgment of the Court of Appeal of Singapore, dated 1st July, 1955, dismissing an appeal from a judgment of Whitton, J., by which the present respondent was granted an injunction restraining the present appellant from making excessive noise or permitting the escape of water, dirt or noxious liquid so as to cause a nuisance to the respondent in his occupation of the ground floor of No. 265, Orchard Road, Singapore. It is not now maintained by the appellant that the facts do not justify the granting of this injunction. The ground of her appeal is that the respondent is not entitled to occupy the premises and is a trespasser. The respondent maintains that his occupation is lawful and is protected by the Control of Rent Ordinance, 1947.

The house, No. 265, Orchard Road, belongs to the appellant. In 1945, when the house belonged to her mother but was managed by the appellant, the appellant let the whole house to Madame Tay by an oral agreement. In 1947 the respondent entered into occupation of the ground floor which he has since used as a dispensary or chemist's shop. The first floor was occupied by one Teo and Madame Tay remained in occupation of the top floor. In 1951 Madame Tay gave notice to quit: on 31st March she vacated the top floor and later in the same year Teo vacated the first floor. The appellant required the respondent to vacate the ground floor but he refused to do so on the ground that it had been sublet to him by Madame Tay and that his tenancy was protected by section 15 (1) of the Control of Rent Ordinance, 1947. That subsection is in the following terms:—

> "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 subletting by the terms of his tenancy and every such judgment or order shall declare whether it may be enforced as against such sub-tenants."

It is not now disputed that Madame Tay did sublet the ground floor to the respondent. The main question in the case now is whether Madame Tay was prohibited from subletting by the term of the oral lease to her of 1945. If she was not so prohibited then admittedly the Control of Rent Ordinance applies and this appeal must fail.

When the respondent refused to quit in 1951 the appellant did not take legal proceedings but she tried to make him leave by a course of interference with his peaceful occupation. The respondent then raised the present action. One of the defences was that the respondent had no right to occupy the premises because subletting by Madame Tay was prohibited by the terms of her lease. At the time of the trial Madame Tay could not be found. The respondent could give no evidence about the terms of the lease and the only direct evidence was that of the appellant. She said that she had told Madame Tay that she would not be allowed to sublet and that Madame Tay had agreed and had promised to give the premises back after two years. In 1947 she said that she had seen the respondent come in and open the shop and had asked Madame Tay about it but had been told by her that the respondent was in partnership with her. It appears that the appellant spoke to the respondent on several occasions but did not ask him whether he was a sub-tenant or Madame Tay's partner.

Whitton, J., said with regard to the appellant: "I was not so favourably impressed by Miss Lim's demeanour in the witness box that I am prepared to accept her unsupported word on any of the material points in issue". There was ample ground on which he was entitled to reach this conclusion. Nevertheless he held that it had been proved that there was a prohibition against subletting in the oral contract.

At the trial evidence was given by Miss Lim's solicitor, Mr. Boswell. He said that in 1947 the appellant consulted him to see whether she could recover possession of the premises. Objection was taken to his giving evidence of what the appellant then told him but the learned judge ruled that the evidence was admissible as indicating the appellant's state of mind when she instructed Mr. Boswell in 1947 as to the existence or otherwise of the covenant against subletting but that it was without value as to what actually transpired between her and Madame Tay in 1945. Mr. Boswell then said that the appellant told him that Madame Tay had been told that she could have the use of the premises provided she did not sublet: the appellant also told him that she suspected subletting. Mr. Boswell advised her that as there was only a verbal arrangement about subletting she might find it difficult to prove successfully her case in court.

The learned judge said with regard to this evidence: "I do think the circumstance that she went in 1947 to consult her then solicitor Mr. Boswell, whose careful testimony I accept unreservedly, about recovery of the premises provides substantial corroboration that the arrangements made in 1945 were as she has told the Court". Later he said that the evidence was admissible not as to what had been said in 1945 but for its circumstantial value as to Miss Lim's state of mind with regard to the existence of a prohibition when she sought legal advice in 1947. He then held that the balance of probabilities was that there was a prohibition against subletting in the oral contract. But he decided the case in favour of the respondent because he held that although it was not unlikely that in 1947 Miss Lim believed that the respondent was a partner of Madame Tay, she had realised for a considerable time before 1951 that he was a sub-tenant and had acquiesced in the situation and had thereby waived the breach of the agreement against subletting. It appears to their Lordships that the learned judge would not have found the existence of the prohibition against subletting proved without the evidence of Mr. Boswell. He held that it was competent to prove Miss Lim's state of mind in 1947 about what had been agreed in 1945.

Whether or not he intended to use the word " corroboration " in a technical sense, he appears to have thought that with this evidence he no longer had to depend on the appellant's " unsupported word " in finding that the prohibition had been proved.

The Court of Appeal held that the learned judge had misdirected himself. Their Lordships do not wholly agree with the grounds of judgment in the leading judgment of Taylor, J., but in their opinion the Court of Appeal reached the correct conclusion. All that Mr. Boswell's evidence could establish was that in 1947 the appellant believed —or rather that she said to him—that two years previously she had said certain things to which Madame Tay agreed. That might disprove any suggestion that her evidence had been recently fabricated but it left the truth of what she told Mr. Boswell depending entirely on her unsupported word. In their Lordships' judgment this evidence should not have been admitted. It is plainly not part of *res gestae* and it is a firmly established rule of the law of evidence that it is not competent to corroborate or reinforce evidence in the witness box by proving that the witness made a similar statement to a third party on some previous occasion. If authority be required their Lordships need not go beyond the decision of the Board in *Gillie* v. *Posho* [1939] 2 All E.R. 196.

It was argued that certain cross-examination of the appellant amounted to a charge that her evidence had been recently fabricated. The appellant was not asked in re-examination whether she had told the same story to Mr. Boswell and their Lordships need not consider whether that would have been competent. It is another matter to lead the evidence of another witness to show that for a long time before the trial the witness has told the same story. Two cases were cited. In *R.* v. *Benjamin* 8 Cr. App. R. 146 a challenge to a witness was met by production of notes made by him. In *Stephenson* v. *Tyne Commissioners* (1869) 17 W.R. 590 it was held competent to reinforce opinion evidence given by an expert by proving that he had acted on the opinion which he gave in the witness box. These cases are far removed from the circumstances of the present case and do not appear to qualify the general rule.

If their Lordships were of opinion that the decision of the trial judge regarding the prohibition against subletting really depended on his assessment of the credibility of the appellant they would be most unwilling to disturb that decision. But they are satisfied that his decision arose from his misdirecting himself as to the competency and effect of Mr. Boswell's evidence. Accepting the learned judge's assessment of credibility they must hold that it has not been proved that there was any prohibition against subletting in Madame Tay's lease and that therefore the respondent's tenancy is protected by the Control of Rent Ordinance.

Their Lordships regret to note that considerable unnecessary expense has been incurred by including in the printed record notes of counsel's arguments and certain preliminary matter not relevant to the subject matter of this appeal. Their Lordships have been informed by counsel that the appellant's advisers wished to omit these parts of the record but that the respondent's advisers required their inclusion. The usual order for costs must be modified so that the cost of printing this part of the record does not fall on the appellant.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the costs of the appeal subject to deduction of the cost of printing those parts of the record which should not have been included.

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In the Privy Council

LIM SIEW NEO

v.

PANG KEAH SWEE

DELIVERED BY LORD REID

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