

IN THE SUPREME COURT OF SEYCHELLES

VICTOR PELLISIER

APPELLANT

VS

SUBRAMANIUM PILLAY

RESPONDENT

Civil side no:63 of 2006

Mr. Rouillon for the Appellant

Mr. Rajasundaram for the Respondent

Judgment

Burhan J

This is an appeal by the Appellant-Respondent Mr Victor Pellisier (hereinafter referred to as the Appellant) from the order of the Rent Board delivered on the 1st of July 2008. The Respondent-Petitioner Mr S Pillay (hereinafter referred to as the Respondent) filed a Petition in the Rent Board seeking eviction and payment of arrears of rent by the Appellant, in respect of the premises described in paragraph 2 (hereinafter referred to as the said premises) of the said Petition dated 14th October 2006. The Rent Board made order in favour of the Respondent stating inter-alia that the Respondent was entitled to claim the rent according to the terms and conditions in the lease agreement, signed by the parties.

The Appellant seeks to have the said order set aside and further moves that the Petition filed in

the Rent Board be dismissed or a retrial ordered on the following grounds, as mentioned in his memorandum of his appeal:

a) The question of who was the actual landlord of the premises at the material time was in dispute to the extent that the Court of Appeal in the case ***Celine Francis and Anor v Subramaniyam Pillay SCA 20 of 2004*** decided that the premises were under the control of the Appellant K Chetty.

b) The board failed to take into proper account that by virtue of the above Court of Appeal order Attorney Bernard Georges wrote a notice to the Respondent ordering him to pay the rightful landlord of the premises Mr K Chetty.

c) The Board failed to consider the fact that the Respondent had vacated the premises and had handed over the keys to Mr K Chetty since June 2006 and to order him to pay excessive rents for premises he does not occupy is legally and morally wrong and unjustified in the circumstances and on the facts.

In this case, it is pertinent while dealing with the merits of the order of the Rent Board delivered on the 1st of July 2008, that one considers the Court of Appeal judgment of ***Celine Francis and Anor v Subramaniyam Pillay (supra)*** delivered on the 19th of May 1986, which for all purposes has a strong bearing on the final decision in this case.

The judgment referred to above, has been interpreted by Renaud J in his ruling marked in the Rent Board inquiry as document D5, thereby forming part and parcel of this record. In that judgment, the Seychelles Court of Appeal decided in respect to the parties in that case, that the 1st Defendant Celine Francis had authority on the power of attorney given to her by the Plaintiff S Pillay, to enter into a lease agreement with the 2nd Defendant K Chetty in respect of a parcel land of which Mr Pillay was the owner. It further held that in doing so, Mr Pillay himself, had conveyed '*rights in personam*' to Mr Chetty the 2nd Defendant.

The evidence of attorney at law Mr Bernard George at the Rent Board inquiry and documents D3 and D4 produced, show that Mr Chetty had subsequently sub leased the said premises relevant to this dispute to Mr Victor Pellisier the Appellant. The existence of such a lease agreement has never been denied by the Respondent in this case, infact his lawyer's letter marked D2 and dated 28th October 2004 admits that a rent is being paid to Mr Chetty in respect of the said premises.

No sooner had the said Court of Appeal judgment been delivered than attorney at law Mr Georges, writing on behalf of his client K Chetty on the 23rd of May 2006 by document marked D4, informed Mr Victor Pellisier who had subleased the said premises from Mr Chetty to pay all rents due to

Mr K Chetty.

However prior to the judgment of the Court of Appeal which was delivered on the 19th of May 2006, Mr Pillay had entered into new lease in respect of the said premises on the 30th of January 2006 with Victor Pellisier marked P1 which was the subject matter of the Rent Board inquiry. At that time the Supreme Court judgment declaring the power of attorney given by Mr S Pillay to Celine Francis void abinitio had been delivered but was subject to an appeal. However, as the Court of Appeal reversed the judgment of the Supreme Court and held that Celine Francis had a valid power of attorney from Mr Pillay which gave her the authority to lease the premises to Mr Chetty, it follows that the sub leasing of the said premises by Mr Chetty to Mr Victor Pellisier was valid. This lease agreement was in existence prior to the lease entered to by Mr Pillay with Mr Pellisier on the 30th of January 2006 in respect of the same premises. Therefore any subsequent lease entered into by Mr Pillay with Mr Victor Pellisier in respect of the same premises including the lease of 30th January 2006 P1, the subject matter of the Rent Board inquiry, for all purposes is not valid and thus no rights could flow from it.

It follows that Mr Pillay the Respondent in this case cannot claim any rental or arrears of rent based on the lease P1 from the Appellant as a prior lease agreement was in existence in respect

of the same premises between Mr Chetty and the Appellant.

On the aforementioned grounds the appeal is upheld. The order of the Rent Board delivered on the 1st of July 2008 is set aside and the Petition filed by the Respondent in the Rent Board dated 14th October 2006 is dismissed with costs.

M. N. BURHAN

JUDGE

Dated this 8th day of February 2010