1981 February 18

[MALACHTOS, DEMETRIADES AND SAVVIDES, JJ.]

EVANGELOS LOUCA,

Appellant,

v.

DEMETRIS MICHAEL DEMETRI,

Respondent.

(Civil Appeal No. 5906).

Landlord and tenant—Statutory tenancy—Recovery of possession—Premises reasonably required by landlord for own use—Section 16(1)(g) *of the Rent Control Law,* 1975 (*Law* 36/75)*—Premises purchased by landlord after the coming into force of the Law—Effect—Alternative accommodation—Personal circumstances of the parties—"Reasonableness"—Hardship—Burden of proof—Principles on which Court of Appeal interferes with trial Judge's conclusion as to hardship.*

The respondent ("the landlord") in this appeal, who is a goldsmith, bought a shop in 1977 ("the shop in question") intending to use it for his own business. He, himself, was a tenant of another shop in Larnaca but his landlord gave him notice to quit and filed an application for his ejectment. His only immovable property was the shop in question whereas the tenant of the shop (the appellant in this appeal) was the owner of substantial immovable property, including shops and two dwelling houses in Larnaca. His profession was the selling of ready made shoes and had two shops in Larnaca for this purpose. The shop in question was managed by his children whereas he, himself, was managing the other shop, which was his own property. Another shop, which also belonged to him, was leased to a tenant who admittedly was not a statutory tenant.

In proceedings by the landlord for recovery of possession under section 16(1)(g)* of the Rent Control Law, 1975 (Law

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* Section 16(1)(g) is quoted at p. 68 *post*

36/75) on the ground that he reasonably required the shop in question for his own use the trial Judge found that the landlord reasonably required for occupation the shop in question in order to roof his business in his own shop and since he was facing an application for ejectment by the owner of the shop in which he was, at the time, carrying on his business. On the question of hardship he was not satisfied by the tenant that greater hardship would be caused to him by granting the order than by refusing it; and that as regards alternative accommodation he found that the tenant did not make any serious efforts to find another shop and he rejected all the shops available at the time and indicated to him by the landlord, most of which without even inspecting them. Regarding the personal circumstances of the parties the trial Judge reached the conclusion that the tenant was in a better financial position than the landlord as he was the owner of substantial immovable property.

Upon appeal by the tenant Counsel for the appellant contended:

(a) That the trial Judge misdirected himself as to the correct criteria to be applied in considering an application for recovery of possession under section 16(1)(g) of Law 36/75 and that the judgment was against the weight of evidence.

(b) That the fact that the landlord bought the shop in question knowing at the time that the tenant was protected by Law 36/75 should militate against him and not in his favour as decided by the trial Judge.

(c) That the evidence adduced on the question of alternative accommodation as well as on the personal circumstances of the parties was vague and so an order for re-trial should be made by this Court.

Held, (1) the factor that the premises were bought by the landlord after the coming into force of the Rent Control Law, 1975 (Law 36/75) is not a decisive factor in the sense of preventing the landlord from succeeding in obtaining possession of the premises and that what the trial Judge is bound to do is to give to this factor due weight.

(2) That in considering reasonableness under section 16(1)(g) of Law 36/75 the duty of the trial Judge is to take into account

all relevant circumstances as they exist at the date of hearing; (see *Cumming* v. *Danson* [1942] 2 All E.R. 653); that the burden was on the tenant to satisfy the Court that greater hardship would be caused by granting the order than by refusing it (see proviso to section 16(1)(g) of Law 36/75); that the question of hardship is a matter for the trial Judge and is not a matter in which this Court can interfere; that this Court can only interfere if on all the evidence there is only one reasonable conclusion to be reached, or, alternatively, if the Judge has misdirected himself on the facts or on the evidence (see *Piper* v. *Harvey* [1958] 1 All E.R. 454); that the tenant failed to satisfy this Court that the trial Judge wrongly found that the shop in question was reasonably required for the use of the landlord or that it was not reasonable to make the order of eviction taking into account all the relevant considerations, including the fact that the landlord purchased the shop in question after the coming into force of Law 36/75, as well as the question of hardship; accordingly the appeal must be dismissed.

Appeal dismissed.

Cases referred to:

Piper v. *Harvey* [1958] 1 All E.R. 454 at p. 457;

Antoniades v. *Panteli & Another* (1979) 1 C.L.R. 57;

Yiannopoulos v. *Theodoulou* (1979) 1 C.L.R. 215 at p. 221;

Cumming v. *Danson* [1942] 2 All E.R. 653 at p. 655.

Appeal.

Appeal by the tenant against the judgment of the District Court of Larnaca (Constantinides, D.J.) dated the 8th December, 1978, (Rent Application No. 100/77) whereby he was ordered to evacuate and deliver up vacant possession of a shop situate at Ermou Street Larnaca.

A. Triantafyllides, for the appellant.

A. Koukounis, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment of the Court. This is an appeal against the order given by a District Judge of the District Court of Larnaca dated 8th December, 1978, by which the appellant, hereinafter referred to as "the tenant" was ordered to evacuate and deliver up vacant possession of a shop situated

at Ermou Street No.134 in Larnaca, under the relevant provision of the Rent Control Law, 1975 (Law 36/75). The execution of the order was stayed by virtue of section 16(2) of the said Law for a period of six months.

The respondent in this appeal, hereinafter referred to as "the landlord", applied for and obtained the Order for possession under section 16(1)(g) of the said Law on the ground that he reasonably required the said shop for his own use. This section reads as follows:

"16.(1) No judgment or order for the recovery of possession of any dwelling house or business premises to which this Law applies, or for the ejectment of a tenant therefrom, shall be given or made except in the following cases:

(g) where the dwelling house or business premises are reasonably required for occupation by the landlord, his spouse, son, daughter, son-in-law, daughter-in-law, brother or sister, who are over eighteen years of age, and in any such case the Court considers it reasonable to give such a judgment or make such an order:

Provided that no judgment or order shall be given or made under this paragraph if the tenant satisfies the Court that, having regard to all the circumstances of the case, greater hardship would be caused by granting the order or judgment than by refusing to grant it.

For the purposes of this paragraph the expression 'circumstances of the case' shall include the question whether other accommodation is available for the landlord or the tenant, and the question whether the landlord purchased the premises after the date of the coming into operation of this Law for the purpose of gaining possession under the provisions of this paragraph.

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The relevant facts of the case as found by the trial Judge and which are not really in dispute are the following:

The landlord, who is a goldsmith, bought the shop in question in 1977 intending to use it for his own business. He, himself is a tenant of another shop in Larnaca but his landlord gave

him notice to quit and in fact filed application No. 148/78 in the District Court of Larnaca for his ejectment. His only immovable property is the shop in question whereas the tenant is the owner of substantial immovable property, including shops and two dwelling houses in Larnaca. His profession is the selling of ready made shoes. He has two shops in Larnaca for this purpose. The shop in question is managed by his children whereas he, himself, is managing the other shop, which is his own property. Another shop, which also belongs to him, is leased to a tenant who admittedly is not a statutory tenant.

The trial Judge after analysing the meaning and effect of section 16(1)(g) of the Law accepted the evidence of the landlord and reached the conclusion that the issue of the order of ejectment applied for was justified. He found that the landlord reasonably required for occupation the shop in question in order to roof his business in his own shop and since he was facing an application for ejectment by the owner of the shop he was at the time carrying on his business. On the question of hardship he was not satisfied by the tenant that greater hardship would be caused to him by granting the order than by refusing it. As regards alternative accommodation, the trial Judge found that the tenant did not make any serious efforts to find another shop. In fact, he had rejected all the shops available at the time and indicated to him by the landlord, most of which without even inspecting them.

Finally, in examining the personal circumstances of the parties, the trial Judge reached the conclusion that the tenant is in a better financial position than the landlord as he is the owner of substantial immovable property.

On these issues the trial Judge referred to a passage in the case of *Piper* v. *Harvey* [1958] 1 All E.R. 454, where Lord Denning observed the following:

> "The tenant has not been able to say anything more than the minimum which every tenant can say, namely, that he has in fact been in occupation of the bungalow, and that he has not at the moment any other place to go to. He has not, however, sought to prove anything additional to that by way of hardship, such as unsuccessful attempts to find other accommodation, or, indeed, to raise the ques-

tion of his relative financial incompetence as compared with the landlord....".

Counsel for the appellant in arguing this appeal before us submitted that the trial Judge misdirected himself as to the correct criteria to be applied in considering an application for recovery of possession under section 16(1)(g) of the Law and that the judgment is against the weight of evidence. The fact that the landlord bought the shop in question knowing at the time that the tenant was protected by Law 36/75 should militate against him and not in his favour as decided by the trial Judge. Finally, on the question of alternative accommodation, as well as the personal circumstances of the parties, counsel for the appellant submitted that the evidence adduced is vague and so an order for retrial should be made by this Court.

In the case of *Andreas Antoniades* v. *Maria Chr. Panteli & Another* (1979) 1 C.L.R. 57, it was decided by this Court that the factor that the premises were bought by the landlord after the coming into force of Law 36/75 is not a decisive factor in the sense of preventing the landlord from succeeding in obtaining possession of the premises. What the trial Judge is bound to do is to give to this factor due weight.

As stated in the case of *Savvas Yiannopoulos* v. *Maritsa Theodoulou* (1979) 1 C.L.R. 215, at page 221, section 16(1)(g) corresponds to section 10(1)(g) of the Rent Control (Business Premises) Law, 1961 (Law 17/61), and to section 16(1)(g) of the Rent Control Law, Cap. 86, as amended by the Rent Control (Amendment) Law, 1968 (Law 8/68). It is a provision which was taken from the rent control legislation in England, on which our correspondent legislation has been modelled, and it corresponds to provisions such as section 3 paragraph (h) of the First Schedule to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (see Halsbury's Statutes of England, 2nd ed., Vol. 13, pp. 1044, 1048, 1060), as amended by paragraph 21 of the Sixth Schedule to the Rent Act, 1957 (see Halsbury's Statutes, *supra*, vol. 37, pp. 550, 600) and, also to Case 8 of the Third Schedule to the Rent Act, 1968 (see Halsbury's Statutes of England, 3rd ed. Vol. 18, pp. 777, 902). And, further down at page 223 of this report, on the question of reasonableness, we read the following:

"The correct approach of a trial Court to the question

of whether it is reasonable to make an order of eviction on a ground such as that which is involved in the present case has been expounded in, *inter alia*, the case of *Cumming* v. *Danson*, [1942] 2 All E.R. 653, where (at p. 655) Lord Greene M.R. stated:-

'In considering reasonableness under section 3(1), it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common-sense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account'".

On the question of hardship it is clear from the proviso to section 16(1)(g) of the Law, that the burden is on the tenant to satisfy the Court that greater hardship would be caused by granting the order than by refusing it.

In the case of *Piper* v. *Harvey*, *supra*, to which reference was made by the trial Judge, at page 457 Lord Denning said the following:

"The question for this Court, which is not an easy one, is whether that is a reasonable and possible conclusion for the county Court Judge to come to having regard to all the evidence. It is undoubtedly the law that if it is just a matter of weighing the balance of hardship, that is a matter for the Judge himself who hears the case, and is not a matter in which this Court can interfere. This Court can only interfere if on all the evidence there is only one reasonable conclusion to be reached, or, alternatively, if the Judge has misdirected himself on the facts or on the evidence. Here it is a very close thing. However, when I look at all the evidence in this case and see the strong case of hardship which the landlord put forward, and when I see that the tenant did not give any evidence of any attempts made by him to find other accommodation, to look for another house, either to buy or to rent, it seems to me that there is only one reasonable conclusion to be

arrived at, and that is that the tenant did not prove (and the burden is on him to prove) the case of greater hardship. Although it is very rarely that this Court interferes in a hardship case, this does seem to me to be a case in which only one conclusion is possible".

We have considered the arguments of counsel for the appellant in the light of the above legal principles and we must say that he failed to satisfy us that the trial Judge wrongly found that the shop in question was reasonably required for the use of the landlord or that it was not reasonable to make the order of eviction taking into account all the relevant considerations, including the fact that the landlord purchased the said shop after the coming into force of Law 36/75, as well as the question of hardship.

Having gone through the record of proceedings we are satisfied that the trial Judge having applied properly the Law to the evidence at his disposal was fully entitled to reach the conclusion he did and to make the Order applied for.

We, therefore, dismiss the appeal with costs.

As the time for which the eviction order was suspended by the trial Court, has expired, we further suspend its enforcement up to 31st March, 1981, so that sufficient time will be given to the appellant to comply with it.

Appeal dismissed with costs.