

1983 September 5

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS. JJ.]

SAVVAS CONSTANTINOU AND ANOTHER.

Appellants-Respondents.

v.

CHRYSTALLENI ATESLI KANTOUNA.

Respondent-Applicant.

(Civil Appeals Nos. 5771 and 5772).

Landlord and Tenant—Practice—Recovery of possession under section 16(1)(g) of the Rent Control Law, 1975 (Law 36/75)—Can be sought by means of an originating application under rule 3(1) of the Rent Control Rules, 1975 made under section 25 of the Law—Reference to the word “action” in section 16(1)(a) does not affect the position—Definition of “Action” in section 2 of the Courts of Justice Law, 1960 and in the Civil Procedure Rules—Said rule 3(1) applies to all proceedings under Law 36/75 and is not ultra vires such Law. 5

Words and Phrases—“Action”. 10

The sole issue in this appeal was whether, in view of the word “action” in section 16(1)(a) of the Rent Control Law, 1975 (Law 36/75), the provisions of section 25* of the Law and the provisions of rule 3(1)** of the Rent Control Rules 1975, proceedings for an order of ejection and delivery of vacant possession under section 16(1)(g) of the Law could be commenced by means of an originating application instead of by means of an action. 15

Held, that the Rent Control Law, 1975 in no way precluded the Supreme Court from providing by the Rules it was empowered to make under section 25 thereof, that proceedings before the competent Court could commence by an originating application as provided by the said rule 3(1); that the reference to the 20

* Section 25 is quoted at pp. 645–646 post.

** Rule 3(1) is quoted at p. 646 post.

word "action" in section 16(1)(a) which is to be found in Part VIII of the Law that deals with the question of the recovery of possession in no way excluded the power to provide by Rules that all proceedings relating to the application of this Law could be instituted by originating application; that the word "action" has no special meaning except that which is given to it by Legislation (see definition of "action" in section 2 of the Courts of Justice Law, 1960 and in the Civil Procedure Rules); and that it was, therefore, open to the Supreme Court to prescribe by the Rules it was empowered for the purpose under section 25 of the Law to make, as to the mode and the form of the proceedings that under the Rent Control Law, could be instituted (see, also, section 20 of the Law); accordingly rule 3(1) of the Rules applies to all proceedings under the Law and is in no way ultra vires the same.

Appeal dismissed

Cases referred to:

Petsa v. Pavlides (1980) 1 C.L.R. 158 at pp. 174-175.

Appeals.

Appeals by the landlord against the orders of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 28th November, 1977 (Appl. Nos. 58/77 and 59/77) whereby her applications for an order of ejectment and for the delivery of vacant possession of her shops at Onasagorou Street Nos. 24C and 24D, Nicosia, were dismissed.

K. Michaelides, for the appellant.

P. Demetriou, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by A. Loizou J.

A. LOIZOU J.: The respondent in these appeals filed in the District Court of Nicosia originating applications seeking an order of ejectment and delivery of vacant possession of her shops situated at Onassagorou Street Nos. 24C and 24D, Nicosia, on the ground that they were reasonably required by her. She relied in that respect on section 16(1)(g) of the Rent Control Law 1975, (Law No. 36 of 1975), hereinafter to be referred to as the Law.

The appellants before taking any other steps in the proceedings applied in each of them for "an order that the application and the Statement of Claim attached thereon under the above title and number, and the service of the aforesaid application and Statement of Claim be set aside as irregular and/or void". 5
 The basic ground relied upon was that the relief of recovery of possession could only be pursued by action in accordance with the Civil Procedure Rules by means of a writ of summons and not by an originating application inasmuch as section 25 of the Law did not empower the Supreme Court and in fact the Supreme Court did not enact rules regulating the procedure for recovery of possession of controlled premises, but merely the Rules so enacted, namely, the Rent Control Rules of 1975 concerned only and exclusively (a) the increase or decrease of rent, 10
 (b) the determination of rent on affected property under section 10, and (c) whether a tenant was entitled up to 20% decrease under sections 15 and 18, of the Law. 15

The learned trial Judge dismissed these applications by identical rulings wherein after referring to the provisions of the Law and in particular to sections 16 and 25 thereof and to rule 3 of the aforesaid Rules, he said that "on reading the above sections one may not find any limitation whatever of the authority of the Supreme Court to make rules regarding ejection and in fact the rules made also refer to ejections. I do not think that the words used in rule 3(1) have any ambiguity and in any way restrict the procedure to a limited class of cases. Had the intention of the Supreme Court been to put any limitation, it would have been very easy to do so". 20
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The grounds of appeal relied upon are the following:

- "1. In view of the provisions of the Rent Control Law 36/75 and particularly ss. 16(1)(a) and 16(3) and the relevant Civil Procedure Rules the trial Court wrongly ruled and/or found that an Order for ejection and delivery of vacant possession of premises, in respect of which the provisions of Law 36/75 applied, could have been made by an Originating Application under the Rent Control Rules, 1975. 30
 35
2. The trial Court wrongly ruled and/or found that the Rent Control Rules, 1975, were not restricted to the

matters which under the provisions of the Rent Control Law 36/75 could be determined by the Court upon an application.

- 5 3. In view of the provisions of ss. 5, 7, 10, 16(1) & (3), 17 and 18 of the Rent Control Law 36/75 and Civil Procedure Rules 0.2, rr. 1 & 6, 0:64, rr. 1 to 4, the trial Court wrongly dismissed the Application to strike out applicant's Originating summons as irregular and void."

10 Part VIII of the Law entitled recovery of possession comprises of sections 16 - 20, both inclusive. Section 16 consists of three subsections and its subsection 1 contains in twelve separate paragraphs the instances when an order for the recovery of possession of any premises to which the Law applies or for the ejection of a tenant therefrom, may be made. It is only in
15 paragraph 8 of subsection 1, which provides for the recovery of possession upon the non-payment of the rent after the lapse of 21 days' notice that the word "action" appears and it reads as follows:

20 "16(1) No judgment or order for the recovery of possession of any premises, to which this Law applies, or for the ejection of a tenant therefrom, shall be given or made except in the following cases:

- 25 (a) where any rent lawfully due was in arrear for twenty-one days or upwards after notice of demand in writing has been given to the tenant and there was no tender thereof before the institution of the action:

30 Provided that rent shall be deemed to have been tendered under this paragraph if it has been sent by prepaid registered post to the person entitled to receive the same;"

We may usefully set out section 25 of the Law as well which in so far as relevant reads:

35 "25(1) The Supreme Court may make such Regulations and give such directions, as it may think fit for the purpose of giving effect to the provisions of this Law.

- (2) Without prejudice to the generality of the foregoing power, such Regulations may prescribe -

- (a) everything that is required to be specified by this Law;
- (b) the practice and procedure of the Court;
- (c) the fees etc.”.

In order to complete the picture, rule 3(1) of the Rules reads:

“The proceedings before the Court commence by the filing by the applicant with the Registrar of the Court of an application in the Form 1 and shall be accompanied by a statement as in Form 2 containing definite details of the relief applied for and of the facts which the applicant intends to invoke”.

Great emphasis has been laid by counsel for the appellants that the words “pro tis egerseos tis agogis” (before the institution of the action), which appear in section 16(1)(a) hereinafter set out support his contention that proceedings for the recovery of possession could only be instituted by a writ of summons under Order 2, rules 1 and 6 of the Civil Procedure Rules and not by an originating application under rule 3 of the Rent Control Rules 1975.

The short answer to all three grounds of appeal which in effect turn on this issue only is that the Law in question, which has to be read as a whole, in no way precluded the Supreme Court from providing by the Rules it was empowered to make under section 25 thereof, that proceedings before the competent Court could commence by an originating application as provided by the said rule 3(1). The reference to the word “action” in section 16(1)(a) which is to be found in Part VIII of the Law that deals with the question of the recovery of possession in no way excluded the power to provide by Rules that all proceedings relating to the application of this Law could be instituted by originating application. The word “action” has no special meaning except that which is given to it by Legislation. In section 2 of the Courts of Justice Law, 1960 (Law No. 14 of 1960) “action” is defined as meaning “a civil proceeding commenced by writ or in such other manner as may be prescribed, by Rules of Court”. An identical definition is to be found in the Civil Procedure Rules with the addition of the word “by any Law” after the word “be prescribed”.

It was, therefore, open to the Supreme Court to prescribe by

the Rules it was empowered for the purpose under section 25 of the Law to make, as to the mode and the form of the proceedings that under the Rent Control Law, could be instituted. That the word "action" was indiscriminately used and without special connotation is strengthened by the wording of section 20 which is the last section of this Part of the Law dealing with the recovery of possession, which provides in so far as relevant that in every application made under the provisions of this Part, the Court may impose at its discretion such additional terms etc., as it deems fit, so here we have in the same Part reference to "application" suggestive in a way that proceedings for the recovery of possession may be by application.

This approach is evidently in line with the judgment of this Court in the case of *Petsas v. Pavlides* (1980) 1 C.L.R., p. 158, pp. 174-175, where it was also pointed that "the use of different expression for the same type of proceedings may, on the face of it, cause certain misunderstandings".

For all the above reasons we find that rule 3(1) of the said Rules applies to all proceedings under the said Law and is in no way ultra vires of same.

The appeals are, therefore, dismissed with costs.

Appeals dismissed with costs.