

Solihull MBC v Hickin

Also known as: Hickin v Solihull MBC



No Substantial Judicial Treatment

Court

Supreme Court

Judgment Date

25 July 2012

Where Reported

[2012] UKSC 39

[\[2012\] 1 W.L.R. 2295](#)

[2012] 4 All E.R. 867

[\[2012\] P.T.S.R. 1272](#)

[2012] 7 WLUK 812

[2013] 1 F.C.R. 279

[\[2012\] H.L.R. 40](#)

[2013] B.L.G.R. 1

[\[2012\] 2 P. & C.R. 16](#)

[\[2013\] L. & T.R. 9](#)

[2012] 31 E.G. 46 (C.S.)

(2012) 162 N.L.J. 1027

(2012) 156(31) S.J.L.B. 31

Times, July 16, 2012

[2012] C.L.Y. 2061

[Judgment](#)

Subject

Landlord and tenant

Other related subjects

Housing; Real property; Local government

Keywords

Joint tenancies; Local authority housing; Occupation; Possession; Secure tenancies; Survivorship

Judge

[Lord Hope JSC](#);

[Lord Walker JSC](#);

[Lord Mance JSC](#);

[Lord Clarke JSC](#);

[Lord Sumption JSC](#)

Counsel

For the appellant: Jan Luba QC, Nicholas Nicol.

For the respondent: Bryan McGuire QC, Catherine Rowlands.

Solicitor

For the appellant: QualitySolicitors Evans Derry.

For the respondent: In-house solicitor.

Case Digest

Summary

The common law rights of a surviving joint tenant of a local authority property were not displaced by the provisions of the [Housing Act 1985 s.89](#), such as to transmit the secure tenancy to a third party, despite the fact that the surviving joint tenant was not in occupation of the property at the time of the other joint tenant's death.

Abstract

The appellant (H) appealed against a decision ([\[2010\] EWCA Civ 868](#), [\[2010\] 1 W.L.R. 2254](#)) that she was not entitled to possession of a property owned by the respondent local authority.

The local authority had let the property to H's mother and father (X and Y) as joint tenants. They separated and Y left the property. X and H continued to live in the property until X's death. The local authority served a notice to quit on Y as the sole remaining tenant and issued possession proceedings against H. H claimed that Y's common law right had been displaced by the [Housing Act 1985 s.89](#), which vested the secure tenancy in her. The first instance judge rejected that contention and ordered possession. H successfully appealed that decision, but the Court of Appeal held that the tenancy had vested in Y under the doctrine of survivorship. The issue to be determined was whether Y's common law rights as joint tenant of the secure tenancy had been displaced by the statutory scheme in favour of H on the death of X.

Held

Appeal dismissed.

(Lords Mance and Clarke dissenting) (1) A secure tenancy was not just a personal right of occupation; it was an estate in land whose incidents were defined by the general law. The provisions in [s.87](#) to [s.91](#) extensively modified the general law otherwise governing the transmission of a secure tenancy. In the case of a death of a periodic tenant, where there was a person qualified to succeed, it was achieved by providing for the secure tenancy to vest automatically in that person. However, the provisions did not wholly displace the general law. They were concerned only with transmission of secure tenancies by dispositions *inter vivos* or on death. They did not expressly deal with the subsisting contractual and proprietary relationship between the landlord and an existing tenant who had not died or disposed of their interest. On the death of one of two joint tenants, the interest of the deceased person was extinguished. The survivor therefore became the sole tenant, but there was no transmission of the tenancy, [Tennant v Hutton \(1997\) 73 P. & C.R. D10](#), [\[1996\] 7 WLUK 137](#) considered. By virtue of [s.81](#), X and Y were secure tenants for as long as one of them occupied the property as an only or principal home. On X's death Y remained the tenant, enjoying the same rights he had always had. The only change in his position was that there was no longer another person concurrently enjoying the same rights. Accordingly, he became the sole tenant and there was no one occupying the property as their own or principal home. The "tenant condition" under [s.81](#) was therefore no longer satisfied and the tenancy ceased to be secure. However, it would have been open to Y to revive its secure status by returning to live in the property at any time before the tenancy was terminated by service of a notice to quit. The question was whether that analysis was excluded by the terms of the Act. For the purposes of [s.89\(1\)](#), "a secure tenant dies" when a sole tenant died but not if the tenancy was a joint tenancy. Section 89 was a mandatory provision which was wholly concerned with the transmission of the tenancy to a person other than the previous tenant, on account of the latter's death. That made sense only on the assumption that there no longer was a previous tenant. It was not an answer to say that the purpose of the statute was to transfer the tenancy to members of the tenant's family living in the house. [Section 88\(1\)\(b\)](#) provided that a "successor" included a person who "was a joint tenant and has become the sole tenant". It followed that Y was deemed to be X's successor for the purpose of [s.87](#). The tenancy did not vest in H on X's death, as the rights of Y still subsisted. "A secure tenant" had not died. All that had happened was that one of the two persons constituting the secure tenant had died. That conclusion was fortified by the fact that, if, as H argued, the tenancy vested in a third party on the death of one of the two joint tenants, then the survivor's contractual right and his interest in the property were expropriated. If

H's argument was right, Parliament would have to be supposed not only to have abrogated the subsisting tenancy of the survivor, but to have done it without express words, let alone unequivocal ones, without any provision for compensation and without any regard to the survivor's circumstances. That would be an extremely implausible construction of the Act (see paras 5-15 of judgment). (2) (Per Lord Mance) Where a joint tenant, in occupation, dies and the surviving joint tenant was not in occupation, the secure tenancy could not continue in the surviving tenant. Nothing in the Act recognised or permitted any right of survivorship which could oust the mandatory statutory provisions for succession contained in s.89, read with s.87 and s.88. Where a secure tenant died, the language of s.89(1) and (2) vested the secure tenancy immediately on the death in any person qualified under s.87 and s.88. In the instant case, the secure tenancy vested and continued in H following X's death (paras 46-48).