



25 July 2012

PRESS SUMMARY

Solihull Metropolitan Borough Council (Respondent) v Hickin (FC)(Appellant) [2012] UKSC 39
On appeal from [2010] EWCA Civ 868

JUSTICES: Lord Hope (Deputy President), Lord Walker, Lord Mance, Lord Clarke, Lord Sumption.

BACKGROUND TO THE APPEALS

Mr and Mrs Hickin became the joint tenants of a three bedroom terraced house in Chelmsley Wood, Solihull in 1967 [2]. The Appellant, Elaine Hickin, is their daughter who has lived in the house since the beginning of the tenancy. The Respondent, Solihull Metropolitan Borough Council, became the freehold owner and landlord in 1980 [2]. On 3 October 1980, the tenancy became a secure tenancy pursuant to Part II of the Housing Act 1980 [2]. The Housing Act 1980 was later consolidated into the Housing Act 1985.

Mr and Mrs Hickin both lived in the house until some time after 1980 when Mr Hickin left. The tenancy remained a joint tenancy in the names of Mr and Mrs Hickin [2]. Mrs Hickin continued to live there with the Appellant until her death on 8 August 2007 [2].

Shortly after Mrs Hickin's death, the Respondent served notice on Mr Hickin to quit the property as it considered that he had become the sole tenant and since he no longer resided there the tenancy was no longer secure. It also commenced proceedings against the Appellant for possession of the house [3]. The Appellant resisted the possession proceedings on the basis that on her mother's death the secure tenancy had vested in her, rather than her father, as a result of section 89 of Housing Act 1985 [3].

At the trial, on agreed facts, Deputy District Judge Hammersley ordered possession. HHJ Oliver-Jones QC, sitting in the High Court, allowed the appeal and declared that the tenancy vested in the Appellant. The Court of Appeal allowed the Respondent council's appeal and restored the order of the Deputy District Judge [3]. The Appellant appealed to the Supreme Court.

The issue in the appeal is whether the common law rights of Mr Hickin as joint tenant of the secure tenancy had been displaced by the Housing Act 1985 statutory scheme in favour of the Appellant upon the death of Mrs Hickin [3].

JUDGMENT

The Supreme Court dismisses the appeal by a 3-2 majority, Lord Mance and Lord Clarke dissenting. Lord Sumption gives the leading judgment (with whom Lord Walker agrees) restoring the order of the Deputy District Judge. Lord Hope, Deputy President, gives a short concurring judgment.

REASONS FOR THE JUDGMENT

A secure tenancy under the Housing Act 1985 is not just a personal right of occupation, but is also an estate in land [6]. At common law, upon the death of a joint tenant, the tenancy is vested in the surviving joint tenant or in all of the survivors if there is more than one [1]. There is no transmission of the tenancy upon death, rather the interest of the deceased person is extinguished [8].

Sections 87 to 91 of the Housing Act 1985 operate to determine the transmission of a secure tenancy [6]. Subject to limited exceptions, a secure tenancy cannot be passed on to a third person with the benefit of the statutory security, either during the lifetime of the tenant or in the course of the administration of their estate after their death, except if that person is qualified to succeed under section 87 [6]. A person is qualified to succeed if he or she is the deceased tenant's spouse or civil partner or any other member of the deceased's family, within a broad definition contained in section 113 [6].

Section 89 of the Housing Act 1985 vests a tenancy in a qualified person if (i) "a secure tenant" has died; (ii) the tenancy was a periodic tenancy; (iii) the qualified person occupies the house as her only or principal home for the period of twelve months proceeding the death and (iv) the tenant was not herself a successor within the meaning of Section 88 [5].

The Housing Act 1985 does not, however, wholly displace the common law. The Act necessarily operates by reference to basic principles of the law of property and does not modify the common law governing the transmission of tenancies; rather it merely affects the statutory security of the tenure available when the tenancy has been transferred [7].

At common law and by virtue of section 8 of the Housing Act 1985, Mr and Mrs Hickin were joint secure tenants for as long as one of them occupied the property as an only or principal home [8]. Upon Mrs Hickin's death, Mr Hickin remained the sole tenant under the agreement with the Respondent, to which he remained party, but since he was not occupying the property the tenancy ceased to be secure [8]. Mr Hickin could have made the tenancy secure again by moving back to the property at any time before the local authority served a notice to quit [8].

The provisions of the Housing Act 1985 do not affect this result. For the purposes of section 89(1), "a secure tenant" dies only when a sole tenant dies; if the tenancy is a joint tenancy "a secure tenant" has not died if there remains at least one living joint tenant [11]. The provisions of the Housing Act 1985 concern the transmission of the tenancy to a person other than the previous tenant on account of the latter's death. Where there is a surviving joint tenant, the whole statutory basis for disposing of the succession to the tenancy is absent [11]. It is only necessary to provide for the transmission of a tenancy on death if there is a vacancy but where a joint tenant remains living there is none [11, 25]. The surviving tenant has the same contractual rights as he always did [11]. If Parliament had intended the section to operate to exclude the common law rights of a joint tenant it would have done so expressly [12]. Lord Hope notes that such express provision was made in the Housing (Scotland) Act 2001 [21 - 23] and whilst that Act could not be an aid to the construction of the relevant provisions of the Housing Act 1985, it indicates the kind of statutory language that can be used if the policy is to override the common law right of survivorship [23].

Lord Mance would have allowed the appeal on the grounds that where the surviving joint tenant is not in occupation, the secure tenancy cannot continue in the surviving tenant who cannot be a secure tenant [47]. In this situation, nothing in the Housing Act 1985 recognises or permits any right of survivorship to oust the mandatory statutory provisions contained in section 89 [47]. The tenancy vested in the Appellant upon Mrs Hickin's death [47]. Lord Clarke would also have allowed the appeal on the ground that transmission under the Housing Act 1985 to a qualified person occurs when any individual joint tenant dies, and in this case the person qualified to succeed Mrs Hickin was the Appellant [60].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html