

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.**

Mohomad Sufian Mohomad Faumi,
No. 249, Thihariya, Kalagedihena.

Plaintiff - Appellant

Court of Appeal Case No.
CA 986/98 F

v.

District Court Gampaha
Case No. 33206/L

P.A.Cyril Perea,
Perera Bekery,

Thihariya, Kalagedihena

Defendant - Respondent.

Before : Malinie Gunarathne J.
: L.T.B. Dehideniya J.

Counsel : H.Withanachchi with Shantha Karunadhara for the Plaintiff
Appellant.
: Sumith Senanayake for the Defendant Respondent

Argued on : 15.12.2015

Written Submissions filed on : 16.02.2016

Decided on : 27.05.2016

L.T.B. Dehideniya J.

This is an appeal against a judgment of the learned District Judge of Gampaha. The plaintiff Appellant (hereinafter sometime called and

referred to as the Appellant) instituted action in the District Court against the Defendant Respondent (hereinafter sometime called and referred to as the Respondent) seeking a declaration of title, ejectment and damages. The Appellant pleaded that his predecessor in title has given the premises on rent to the Respondent. At an inquiry held in the Rent Board of Veyangoda, the Respondent has agreed to enter the Appellant's name as the landlord. At the same inquiry, the Respondent agreed to relinquish his tenancy and to handover the possession of the premises to the Appellant on 30th April 1990. The Appellant agreed not to collect any rent until that date. The Respondent being failed to vacate on the agreed date, the Appellant filed this action as a rei vindicatio action to eject the Respondent. The Respondent filed answer claimed the protection under Rent Act No. 7 of 1972. The learned District Judge disbelieved the agreement and dismissed the action. Being aggrieved by the said judgment the appellant presented this appeal.

At the argument, the parties agreed to dispose this case on the following questions of law.

1. Whether a tenant can contract out of the protection afforded by the Rent Act to vacate the premises at a given time?
2. Whether the agreement entered into by the plaintiff and the defendant at the Rent Board of Veyangoda could be enforced to eject the tenant, by the proceedings instituted in the District Court.
3. Whether an agreement entered into before the Rent Board, with certain conditions which have not fulfilled, is enforceable in the District Court?

The agreement entered into by the parties is marked as P3 at the trial. It is a part of the proceedings of the inquiry held at Rent Board of Veyangoda

held on 26.09.1989. At the inquiry the Appellant did not contest the tenancy of the Respondent and agreed to enter his name as the landlord.

The Rent Act No 7 of 1972 was enacted to protect the tenants. It regulates the amount of rent that can be charged by a landlord from a tenant, the termination of the tenancy and eviction of a tenants etc.

Even though there are no admissions recorded at the trial, the fact that the premises are governed by the Rent Act is not contested. Similarly, the Appellant did not contest that he is the landlord and the Respondent is the tenant. The Respondent in his answer pleaded that the Appellant has misinterpreted the agreement entered in the Rent Board but did not raise any issue to that fact which means that he admits the agreement entered into at the Rent Board.

The first question that has to consider is whether a tenant can contract out of the protection afforded by the Rent Act to vacate the premises at a given time? It is well established principle that a tenant cannot contract out of the Rent Act.

*A. M. M. Ibrahim Saibo vs. S. D. M. Mansoor 54 NLR 217At 224
(five bench judgment)*

A tenant can never contract out of the protection afforded. It follows from this that he can at any moment recall a promise to surrender possession. The only two ways in which the statutory protection comes to an end are:-

- 1. By the handing back of the premises to the landlord.*
- 2. By the order of a competent court that is to say a court acting with jurisdiction.*

Hussain vs. Jiffry [2002] 1 Sri L R 185

The appellant was the landlord and the respondent was the tenant of premises No. 297, Main Street, Colombo 11. On 31. 03. 1980, the respondent informed the appellant in writing that he (the respondent) was relinquishing his tenancy with effect from that date and requested the appellant to give the premises to one R. There was no evidence of a new tenancy, nor did the respondent give vacant possession of the premises to the appellant.

However, the respondent sent a letter dated 05. 07. 1980 to the appellant informing her "I continued and still remain the lawful monthly tenant of the premises" with a cheque for rent for the months of April, May and June, 1980, which established that the respondent had not handed over the premises to the appellant.

The appellant instituted action for the ejectment of the respondent from the premises, alleging that by this letter dated 31. 03. 1980 the respondent voluntarily terminated the tenancy and that he was in unlawful occupation from 01. 04. 1980.

Held :

(1) In the circumstances, there was no termination of the tenancy and the rule that a tenant cannot contract out of the protection afforded by the Rent Act applies.

Rajapakse vs. Bogoda [1997] 2 Sri L R 390

(3) it is an accepted principle that parties cannot contract outside the rent act where the premises is governed by the rent act.

In the instant case also the tenant, the Respondent, agreed to relinquish the tenancy from 30th April 1990 but not vacated the premises. He continued to occupy the premises even after the agreed date. He has

shown his intention of not to surrender the tenancy. It has been held in the case of Hussain vs. Jiffry (supra) at page 189 that

“It is conceded that although the respondent wrote the letter P1 dated 31. 03. 1980, the premises in question was not handed over to the appellant. Even if the respondent had wanted to relinquish the tenancy at the time he wrote the letter P1, and if the owner has accepted it, still it would be necessary for the premises to be physically handed over by the respondent to the appellant, for the statutory protection to come to an end. Under a contract of tenancy, the owner and the tenant agree and accept the terms of tenancy. Therefore, although the respondent may have contemplated relinquishing the premises as revealed in P1, he could, nevertheless, unilaterally change his mind and reverse his decision, if he had not handed over the premises to the landlord. In such circumstances the document marked P1 by itself does not serve to terminate the tenancy.”

The same principle applies to the instant case. That the parties cannot contract outside the rent act where the premises is governed by the rent act

As such the first question has to be answered in negative.

The second question is whether the agreement entered into by the plaintiff and the defendant at the Rent Board of Veyangoda could be enforced to eject the tenant, by the proceedings instituted in the District Court.

Since the 1st question is answered in negative, the contract of tenancy is not terminated. Sec 22 of the Rent Act prescribes the procedure for ejectment of a tenant. Not vacating the premises on the agreed date is not

a reason to eject a tenant under that section. The Act provides that notwithstanding anything in any other law, no action or proceedings for the ejection of the tenant of any premises shall be instituted in or entertained by any court, unless it comes within the provisions of section 22 of the Act.

In the case of Pinona vs. Dewanarayana and others [2004] 2 Sri L R 11 Andrew Somawansa J. cited with approval, the judgment of Wadugodapitiya J. in the case of Jayasingham v Arumugam [1992] 1 SRI L R 350 where it has been held that;

"As the issue was whether in terms of the Rent Act, No. 7 of 1972, a letter given by the tenant that he would vacate the premises, the Roman Dutch law would be irrelevant. Section 22 does not set out as a ground for ejection the giving of a notice to quit by the tenant to his landlord. Hence the letter given by the tenant will not terminate the tenancy in terms of the Rent Act."

At page 357 per Wadugodapitiya, J:

"In considering issue No.4 in the context and within the frame work of the Rent Act, No.7 of 1972, it may be mentioned that section 22 of the said Act, as its marginal note indicates, deals with "Proceedings for ejection", and sets out the grounds for ejection. However, nowhere does section 22 mention, as a ground, for ejection, the giving of a notice to quit by the tenant to his landlord. It is therefore clear that the giving of such a notice to quit the premises, or, in the context of this case, the giving of the letter P5 by the appellant to the respondent, stating that he (the appellant) will vacate the premises, will in no way give rise to a cause of action to the respondent, under the Rent Act, No. 7 of 1972, to eject the appellant from the premises in suit."

As such, the 2nd question also to be answered in negative.

The third and last question raised by the parties is whether an agreement entered into before the Rent Board with certain conditions which have not fulfilled is enforceable in the District Court? This question does not arise as I have already answered the first two questions in negative.

Under these circumstances, I dismiss the appeal subject to costs fixed at Rs. 10,000/-

Judge of the Court of Appeal

Malinie Gunarathne J.

I agree.

Judge of the Court of Appeal