

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

CA 1277/96 (F)

DC Kandy Case No. 2347/RE

1. M.C. Fernando.
No. 6, Ankumbura
Road,
Alawathugoda.
2. K.A. Richard Silva,
No.6, Ankumbura
Road,
Alawathugoda.

Defendant-Appellants.

Vs.

T.W. Tilakaratne, No.
16, Ankumbura Road,
Alawathugoda.

Plaintiff-Respondent.

BEFORE : A W A SALAM, J

COUNSEL : Anura Gunaratne for the Defendant-Appellant.

Shantha Jayawardane for the Plaintiff-Respondent.

ARGUED ON : 29.02.2012

Written Submissions filed on : 25.06.2012

DECIDED ON : 27.09.2012

A W A SALAM, J.

This is an appeal arising from the judgement of the learned district judge dated 3rd September 1996 granting relief to the plaintiff-respondent (plaintiff) issuing a declaration of title in his favour as regards the premises in question and ejection of the 1st and 2nd defendant-appellants (and defendants). The facts briefly are that the plaintiff alleged that he rented out the premises in question to the 1st defendant-appellant and that he had sublet the premises to the 2nd defendant-appellant. Further the plaintiff alleged that the defendants have deteriorated the rented premises and the 1st defendant-appellant was in areas of rent for more than 36 months.

The 1st defendant denied having sublet the premises and caused deterioration of tenanted premises. As regards the tenancy alleged by the plaintiff the defendants took up the position that they are co-owners of the subject matter and the action therefore is not maintainable.

At the commencement of the trial although no admissions have been recorded the parties agreed that the documents issued by the Rent Board, postal authority and local authority concerned be accepted as genuine without the respective authority, namely the Rent Board, postal authority and the local authority being called to testify as to the genuineness of the said documents. The matter of the dispute proceeded to trial on 16 issues. The first nine issues were suggested

by the plaintiff and 10 to 14 by the defendants. The plaintiff suggested consequential issues 15 and 16. At the trial the plaintiff gave evidence and closed his case reading in evidence documents marked P1 to P5. Thereafter, the 1st 2nd defendants gave evidence and closed their case producing in evidence 1D1 to 1D5. The first issue raised by the plaintiff is whether he is the owner of the subject matter. The learned district judge held in favour of the plaintiff on that issue and the second issue was whether the plaintiff had rented out the premises in question to the 1st defendant. The learned district judge on that issue also held in favour of the plaintiff. The second issue is quite significant. It reads as to whether the 1st defendant had sublet the premises without the permission or leave of the plaintiff to the 2nd defendant. Third and fourth issues centred around the allegation regarding deterioration of the tenanted premises. The learned district judge held inter alia that without establishing the allegation of subletting and deterioration the plaintiff is entitled to have the defendants ejected from the tenanted premises as the 1st defendant has denied the tenancy under the plaintiff.

The judgement of the learned district judge is mainly based on the premise that if there is an unreasonable or unjustifiable denial on the part of the 1st defendant of the tenancy under the plaintiff, the plaintiff is entitled to judgement against the 1st defendant. The learned district judge in his judgement quite rightly set out the law on this aspect. If the tenant denies his tenancy he is not entitled to any relief, a tenant is usually entitled to under the law. In order to establish the contract of tenancy alleged to have existed between the plaintiff and the 1st defendant, the plaintiff produced several documents relating to the proceedings the parties have had before the

Rent Board of Matale. P1 is a document issued by the Rent Board of Matale. Parties have agreed that the said document may be accepted as genuine without the author being summoned to testify. There is no dispute that P1 has been issued with regard to the subject matter. In terms of document marked as P1 the plaintiff and the 1st defendant have accepted the subject matter of the action to be the tenanted premises irrespective of the typographical mistake that had occurred in the preparation of the document. It is quite clear that the proceedings had before the Rent Board was with regard to the subject matter of this action. The compromise reached in those proceedings before the Rent Board was that the plaintiff is the landlord of the premises in question and the 1st defendant the tenant and the monthly rental of the said premises Rs.70 and cents 05. The defendants sought to impeach the said document on the basis that they were unrepresented before the Rent Board, when the terms of settlement were recorded. The learned district judge has rejected the contention that P1 should not be acted upon on the basis that the defendants were unrepresented. I do not see any reason to interfere with the finding of the learned district judge on that issue.

Arising on the above finding the learned district judge has clearly held that the 2nd defendant has no right of possession of the tenanted premises and therefore he is liable to be ejected. Having considered the evidence led at the trial, I am of the opinion that there is overwhelming evidence that the plaintiff has rented out the premises in question to the 1st defendant. As such the 1st defendant has no right to dispute the title of the plaintiff even if he had subsequently become the owner of an undivided share of the subject matter of the tenancy action.

As the plaintiff has established the contract of tenancy with the 1st defendant and by virtue of that contract he placed him in possession of the premises, the defendant cannot be permitted to deny now that the plaintiff had a sufficient title to let the premises to him or even raise the question of what that title was, for such a question, is unknown and alien to the law relating to letting and hiring. He cannot even rely on his title to contest the plaintiff's case.

In the case K Hassan Vs A O Nagria 75 NLR 335, Mansoor Vs Umma 1984 (1) SLR 151 and Ranasingha Vs Premadharma and others 1985 (1) SLR 63 the rule laid down is that when a tenant denies tenancy by his own act he repudiates the contract of tenancy.

It is quite appropriate at this stage to refer to the judgment in the case of Reginal Fernando Vs Pabilinahamy and another 2005 SLR 1 38 in which the Supreme Court held inter alia that upon the plaintiff (licensor) establishing that the defendant is a licensee, the former is entitled to take steps for ejectment of the latter even in the absence of proof as to the ownership of the land.

In the case of R W Pathirana Vs R E De S Jayasundera 58 NLR 169 the Supreme Court held that the lessee who has entered into occupation must first restore the property to his landlord in fulfillment of his contractual obligation which the defendant in the instant case has miserably failed to fulfill. In the same case Gratiean, J stated the law as follows...

“In a *rei vindicatio* action proper, the owner of immovable property is entitled, on proof of his title, to a decree in his favour for the recovery of the property and for the ejectment of the person in wrongful occupation.

"The plaintiff's ownership of the thing is very essence of the action ". Maasdorp's Institutes (7th Ed.) Vol. 2, 96.

Indeed, a lessee who has entered into occupation is precluded from disputing his lessor's title until he has first restored the property in fulfilment of his contractual obligation. "The lessee (conductor) cannot plead the exceptio domini, although he may be able easily to prove his own ownership, but he must by all means first surrender his possession and then litigate as to proprietorship. Voet 19.2.32.

In the case of Alvapillai Vs Karuppan 4 NLR 321, it was held that the tenant who comes into possession of the whole land is not entitled under the law of Ceylon to set up title of his own, even though he were the owner of a moiety of it. His obligation is to first hand over the possession of the land and premises to the Landlord on the expiry of the lease and thereafter litigate about the ownership. Based on this legal principle the learned district judge in my opinion cannot be faulted for his decision. In the circumstances the appeal preferred by the defendant-appellants should stand dismissed. The plaintiff is entitled to the costs of this appeal.

Judge of the Court of Appeal.

NR/-