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

In the matter of an Application Under section 754 of the Civil Procedure Code.

Court of Appeal Case No:
CA/480/2000F
District Court of Colombo
Case No: 15586/L

D.E. Jayasinghe
No. 01, Mahabuthgamuwa,
Angoda.

Plaintiff

Vs.

1. A.M.K.P. Nona (Deceased)
   No. 235, Megoda, Kollonnawa,
   Wellampitiya.

2. Ranasinghe Arachchige Piyasena

3. Ranasinghe Arachchige Irene

4. Ranasinghe Arachchige Miyurin

5. Ranasinghe Arachchige Gunasena

   All of No. 235, Megoda,
   Kollonnawa, Wellampitiya.

Substituted Defendants

And now between

2. Ranasinghe Arachchige Piyasena

5. Ranasinghe Arachchige Gunasena

   All of No. 235, Megoda,
   Kollonnawa, Wellampitiya.

   Substituted Defendant-Appellants

   Vs.

   D.E. Jayasinghe (Deceased)
   No. 01, Mahabuthgamuwa,
   Angoda.

1. (A) Sapinona Sendanayaka
   No. 81, Mahabuthgamuwa,
   Angoda.

2. (B) Nihal Jayasinghe
   No.2/3A, Mahabuthgamuwa,
   Angoda.

3. (C) Noel De Nelson Jayasinghe
   No.349/B,Kudabuthgamuwa,
   Angoda.

4. (D) Saman Jayashantha
   Jayasinghe
   No.349/B,Mahabuthgamua,
   Angoda.

5. (E) Saman Jayashantha
   Jayasinghe
   No. 8L, Mahabuthgamuwa,
   Angoda.

   Substituted Plaintiff-Respondents

3. Ranasinghe Arachchige Irene

4. Ranasinghe Arachchige Miyurin

Both of No. 235, Megoda,
Kollonnawa, Wellampitiya.

Substituted Defendant Respondents

Before	:	Dhammika Ganepola, J. Damith Thotawatta, J.
Counsel	:	Suren Fernando with Shiloma David Instructed by Vidanapathirana Associates for the 02nd and 05th Substituted Defendant-Appellants. Rasika Dissanayake with Sandun Senadhipathi for the Plaintiff Respondent.
Argued on	:	10.12.2024
Written Submissions tendered on	:	2nd and 5th Substituted Defendant - Appellants : 09.12.2024, 22.01.2025 Substituted Plaintiff - Respondent : 20.01.2025
Decided on	:	30.04.2025

Dhammika Ganepola, J.

The Plaintiff-Respondent (hereinafter sometimes referred to as "Plaintiff) instituted this action in the District Court of Colombo seeking the ejectment of the Defendant-Appellant (hereinafter sometimes referred to as "Defendant) and any person holding possession of the subject

premises under his authority from the premises bearing assessment no 235, Megoda Kollonnawa, Wellampitiya and damages as prayed for in the Plaint and for cost.

The Plaintiff avers that he is the lawful owner of the premises, and the Defendant came into occupation of the premises with the Plaintiff's leave and license on a compassionate basis without paying any rent. Thereafter, the Plaintiff, by letter dated 05.08.1988, sent through his Attorney-at-Law to the Defendant, terminated the leave and license and requested the Defendant to hand over the peaceful vacant possession of the premises to the Plaintiff by the end of September 1988. Despite such request, the Defendant has been illegally holding possession of the premises, causing damages to the Plaintiff. The Defendant asserted in her answer that she began occupying the disputed premises, governed by the Rent Act, around 1971 as a lawful tenant of the Plaintiff and has paid the rent.

The case proceeded to trial based on the following admissions and the issues recorded by the parties.

Admissions:

1. It is admitted that the defendant is residing in the premises in suit.
2. The plaintiff is the owner of the premises in suit.

Issues raised on behalf of the Plaintiff: -

1. Did the Plaintiff terminate the leave and licence granted to the Defendant to occupy the said premises by the letter dated 05.08.1998 sent by the Plaintiff’s Attorney-at-Law?
2. Is the Defendant in unlawful occupation of the said premises from 01.10.1998?
3. If the aforesaid issues are answered in the affirmative, is the Plaintiff entitled to the relief prayed for in the Plaint?

Issues raised by the Defendant: -

4. Is the Defendant in occupation of premises No. 235 from 1971 as the tenant of the Plaintiff?

5. Are the said premises governed by the provisions of the Rent Act No.7 of 1972?
6. Is the standard rent of the said premises less than Rs. 100/=?
7. If the aforesaid issues are answered in favour of the Defendant, can the Plaintiff have and maintain this action?

Based on the contents of the admissions, the burden was shifted to the Defendant and the Defendant had been directed to commence the case. Commencing the case, the Defendant had given evidence. The Defendant stated that she came into occupation of the premises in dispute in April 1971 under one Jayasinghe and had been paid Rs. 20/= of rent until 1981. In one instance, the Defendant had been informed that the Plaintiff was ready to sell the land. Consequently, the Defendant had requested the Commissioner of National Housing to purchase the land by document marked V1. There had been an inquiry before the Commissioner, and both the Plaintiff and the Defendant had given evidence in respect of the said request. Despite such, thereafter, the Plaintiff had withheld his willingness to transfer the property by sending a letter marked V3. The Defendant stated that thereafter, from 1981she deposited the rent in Kotikawaththa-Mulleriyawa Pradheshiya Sabhawa.

In the cross-examination, the Defendant had stated that although she paid rents for the period from 1971 to 1981, no receipts were issued to her by the Plaintiff, nor did she ask for the receipts because of her imprudence. The Defendant had received Rs. 17.50 per month as a charitable allowance from the Government in 1981. However, in her application V1 to the Commissioner, the Defendant had stated her income was Rs. 17/=. Whereas in the cross-examination, the Defendant has stated that the Plaintiff informed the Commissioner that the Defendant is in occupation of the premises on charitable grounds. However, the Defendant had submitted to the Commissioner that the Defendant was not a tenant.

After the Defendant's evidence was concluded, an officer from the Natonal Housing Development Authority, witness Manne Dewage Sumanawathie, had been called as a witness on behalf of the

Defendant. She has produced the relevant file maintained at the National Housing Development Authority and has identified documents marked V1 dated 05.04.1982, V2 dated 02.05.1984 and V3 dated 13.07.1982 by the Defendant. The witness has given evidence indicating that, according to the documents mentioned above, the Defendant claims to be the tenant, paying a monthly rent of Rs. 20/= despite the Plaintiff asserting that he has not received any rent and has only allowed the Defendant to occupy the impugned premises out of compassion.

Thereafter, one Gurudas Perera, Revenue Officer of Kotikawathtta-Mulleriyawa Pradhesheeya Sabhawa, had given evidence and had identified the receipts marked V4 and V5(1)to V5(7) issued in respect of the payment of rent in respect of the premises No.235. The above payments had made for the years 1985,1986,1987,1988. No payments have been made for years 1982,1983, and 1984 and such depositing of money had only commenced in 1985.

After the Defendant's case was closed, the Plaintiff had given evidence. The Plaintiff had submitted that he gave the premises in suit to the Defendant on her request as she had no house to live. The Defendant has been permitted to occupy the premises on compassionate grounds since 1971, free of charge. The Plaintiff has not taken any rent from the Defendant nor taken any money deposited by the Defendant in the Pradeshiya Sabha. The Plaintiff had sent the notice of quit dated 05.8.1988(P1) to the Defendant asking the Defendant to deliver the vacant position of the premises by 03.09.1988. Although the Defendant has indicated that she did not receive a notice of quit in her evidence, a reply to the P1 had been sent by the Defendant's Attorney at Law on 30.08.1988 and the same has been marked by the Plaintiff in his evidence as P2, which proves the receipt of P1.

In the cross-examination, the Plaintiff denied giving the premises on rent to the Defendant. The Defendant had made an application to the Commissioner of National Housing to purchase the property. As per the document marked P4, for the first time, the Defendant has

deposited money in the Pradhesheeya Sabha in the year 1985. However, the Plaintiff submits that he had not taken any of such money as the Defendant was not a tenant. There had been no tenancy agreement between the Plaintiff and the Defendant either. Thus it is submitted that the Defendant had been illegally occupying the premises since 01.10.1988.

After the conclusion of the trial, the learned District Judge had entered judgment dated 29.06.2000 in favour of the Plaintiff. The learned District Judge had come to the conclusion that the Defendant is not a tenant, the Defendant had come to the occupation of the premises as a licensee. However, after the termination of the leave and licence granted by the Plaintiff, the Defendant is unlawfully occupying the said premises.

Aggrieved by the said judgement, the Defendant preferred an appeal against such judgement. The matter was heard in appeal, and the judgement dated 25.03.2021 was delivered by the Court of Appeal dismissing the Appeal. The Defendant sought Special Leave to Appeal against the judgement of the Court of Appeal by filing the application bearing No. SC/SPL/LA/ NO. 86/21. The Special Leave to Appeal was granted, and the matter was argued and decided on 08.08.2024 by the Supreme Court. The Supreme Court had set aside the judgement of the Court of Appeal and had allowed the appeal and had sent the same for rehearing. Accordingly, the matter was argued before this Court on 10.12.2024, and written submissions were tendered thereon.

The Defendant submitted that the Impugned judgement of the District Court should be set aside for the reasons more fully set out as follows:

a. The learned District Judge had failed to adequately evaluate and appreciate the evidence submitted by the Defendant as to the existence of tenancy;
b. The learned District Judge had erroneously held that rent receipts have not been marked in evidence and that the

receipts produced in evidence have only been after the year 1988;

c. The learned District Judge had erred in failing to recognise that the Defendant had consistently paid rent to the subject premises;
d. The learned District Judge had erred in failing to appreciate that the absence of rent receipts issued by the Plaintiff does not *ipso facto* establish the absence of a tenancy;
e. The learned District Judge had failed to appreciate the compelling factual circumstances which were suggestive of a tenancy inasmuch as the Plaintiff admittedly rented another of his premises to a relative of the Defendant;
f. The learned District Judge had failed to consider the delay involved in the Plaintiff seeking to recover possession of the land, which shows that the position advanced by the Plaintiff is not credible;
g. The learned District Judge had erred in holding that the subject premises are not governed by the Rent Act No. 7 of 1972 (as amended);
h. The learned District Judge had incorrectly concluded that the documents of the Defendant marked in evidence had not been proved;
i. The learned District Judge had failed to consider the documentary evidence of the Defendant marked V1- V8;

The Defendant submitted that since the Defendant's occupation of the premises is admitted, as per Section 10 of the Rent Act, the only other matter which was required to establish a tenancy is the payment of rent for such occupation by the Defendant. Section 10(1) of the Rent Act is as follows.

> (1) *For the purposes of this Act, any part of any premises shall be deemed to have been let or sublet to any person if such person is in occupation of such premises or any part thereof in consideration of the payment of rent and the provisions of this Act shall not apply to*

such letting or subletting unless the landlord has consented in writing to the letting or subletting of such premises.

The learned Counsel for the Defendant argued that the learned District Judge failed to adequately evaluate the evidence submitted by the Defendant. At this instance, it is important to consider whether there were enough materials to prove the tenancy of the Defendant. The Defendant had claimed that she obtained the premises on rent from the Plaintiff on a monthly rental of Rs. 20/= in 1971. It is on the common ground that there is no written agreement to support such tenancy. Although the Defendant claimed to have paid rent from 1971 to 1981, she has failed to adduce any evidence to support such stance.

ප්‍ර: *71 සිට 81 දක්වා කුලී ගෙව්වා කියන කාරනාව ඔප්පු කරන්න මොනම ලියවිල්ලක්වත් නැහැ. කටින් කියනවා හැර.*

උ: *ඒ මහත්තය දීලත් නැහැ. අපි ඉල්ලුවෙත් නැහැ.*
අපට ඉඩම ඉල්ලල හිරිහැර වෙන කොට අපි නිවාස දෙපාර්තමේන්තුවට ගියේ.
(Vide, Proceedings dated 15.07.1994 at page 87 of the Brief)

Further, when the Defendant was cross-examined on whether the Defendant could submit rent receipts, the Defendant had replied that although she paid rent, she had not been issued with any receipts by the Plaintiff.

ප්‍ර: *තමන්ට තවත් යෝජනා කරනවා. ඇල්බට්ට මේ ගෙදර නිකම් ඉන්න දුන්නා කියල.*

උ: *මම රු. 20/= ගානේ කුලිය ගෙවා ගෙන හිටියේ.*

ප්‍ර: *තමන්ට කුවිතාන්සි තිබෙනවද පෙන්වන්න.*

උ: *තිබෙනවා.*

ප්‍ර: *ඒවා ඉදිරිපත් කරනවාද?*

උ: *පෙරකදෝරු මහතා ලඟ තිබෙනවා.*

ප්‍ර: *කවුරු විසින් දුන්න ඒවාද?*

උ: *අපිට හාමුදුරුවනේ ගෙවල් කුලී ගෙව්වට බිලක් දුන්නේ නැහැ. අපිත් නිකම් හිටියා. ඊට පස්සේ අයිති එක්කෙනා විකුණන්න හදනකොට නිවාස දෙපාර්තමේන්තුවට ගියා. මගෙන් ඇහුවා ගේ ගන්නවාද කියල. ඊට පස්සේ ටී.සී. එකට ගෙවල් කුලී බඳිනවා.*

(Vide, Proceedings dated 15.07.1994 at page 86 of the Brief)

The Counsel for the Defendant relies on Section 33 of the Rent Act. Section 33(2) of the Act provides that it shall be the duty of the landlord of any premises to issue to the tenant a receipt in acknowledgement of every payment made by the tenant by way of rent or advance, whether or not such receipt is demanded by the tenant. The Counsel for the Defendant submits that as the law casts the duty to issue receipts on the landlord, the Defendant cannot be faulted for failure to produce rent receipts from 1971-1981.

First, the above submission itself shows that the Defendant admits the fact that she is not in possession of any rent receipts for the aforesaid period. However, since the Plaintiff maintains the position that the Defendant is a mere licensee and not a tenant, no burden can be placed upon the Plaintiff to produce rent receipts unless the Defendant is proven to be a tenant.

Second, in a situation where the landlord refuses to accept rent, the Rent Act provides for an alternative method to be followed by the alleged tenant. In Sirisena v. Perera 1999(3)SLR,295, it was held that "*It is the duty of the tenant to pay the rent, and if the landlord refuses to accept the same, section 21 provides for an alternate method of paying such rent.*"

However, no evidence has been led by the Defendant to support the position that the Defendant had taken any such alternative step to deposit rent or compel the Plaintiff to issue rent receipts since 1970 until the Defendant made an application to the Commissioner of National Housing in 1982. Although the Defendant has stated in her evidence that she had paid monthly rentals to the Plaintiff, according to the Defendant no receipts in proof of the have been issued to her. I am mindful of the fact that such oral evidence of the Defendant should not be rejected merely on the ground that the Defendant had not taken any alternative steps as specified under Rent Act. However, it is important to note that the Defendant has failed to corroborate her evidence to the effect that she was not issued any receipts for the rental payments made by her. In the aforesaid circumstances, the only inference that could be reached is that the Defendant had not paid any rent to the Plaintiff during said period.

It was submitted on behalf of the Defendant that despite observing that the rent receipts marked in evidence for the period commencing from year 1985 have been proved by the Revenue Officer of the Kottikawatta – Mulleriyawa Pradeshiya Sabha, the learned District Judge has come to a contradictory finding that the rent receipts have only been produced after year 1988. In fact, the Revenue Officer has given evidence before the District Court to the effect that the Defendant had deposited rent from the year 1985 until the year 1993. Consequently, the learned Counsel for the Defendant asserted that the learned District Judge erred in answering issue No. 4 as to the existence of a tenancy in the negative.

(4) *විත්තිකාරිය 1971 කාලයේදී පමණ අංක 235 දරණ ස්ථානයේ නීත්‍යානුකූල කුලී නිවැසියා වශයෙන් පදිංචියට පැමිණියේද?*

උ: නැත.

කුලී නිවැසියා වශයෙන් පදිංචිවී එදින සිට කුලී ගෙවිව බවට එකම රිසිට් පතක් හෝ ඉදිරිපත් කර නැත. විත්තිකාරිය විසින් රිසිට් පත් ඉදිරිපත් කර ඇත්තේ 1988 න් පසුවය. ඒ දක්වා ඇය එම ස්ථානයේ නීත්‍යානුකූල කුලී නිවැසියා වශයෙන් පදිංචිවී සිටි බවට මා පිළිගන්නේ නැත. අවසර ලාභියෙකු ලෙස සිටි බව පිලිගනිමි.

(Vide, Judgement dated 24 April 2000 at page 160 of the Brief)

However, even if the learned District Judge arrived at the conclusion that the Defendant had paid rent from 1985 as evident from the rent receipts marked through the Defendant, the learned District Judge could not have arrived at different conclusion that the Defendant had come into occupation of the premises as a tenant of the Plaintiff from 1970 and continued until 1981. Because, no materials have been placed before the Court to prove tenancy of the Defendant by submission of rent receipts or any other way as referred earlier. In the case of Swami Sivagnananda V The Bishop of Kandy (1953) 55 NLR 130, Gratiaen J. has opined that: "Although a person who is let into exclusive possession is prima facie to be considered to be a tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy".

Although the Plaintiff contends that the Defendant is a licensee, the Defendant claims that she is a tenant. It is on the common ground that the Defendant has failed to produce any receipt to support that she paid

rent to the Plaintiff from 1970 to 1985. No written agreement or any other documentary proof has been placed before the Court to support the position that the Defendant entered the premises in occupation as a tenant in 1970. The Plaintiff conceded the fact that he had let another of his houses to a relative of the Defendant named Harriet in cross-examination. Although the Defendant submitted that the above oral testimony leads to the assumption that the subject premises must also have been let to the Defendant on rent as opposed to the alleged leave and license granted by the Plaintiff, this Court cannot accept such a submission. As such an acceptance is against the established legal principles on the admissibility of evidence. Therefore, the inference that could be arrived at based on the evidence available is that the Defendant came into the possession of the subject premises as a licensee of the Plaintiff.

The Defendant had made an application to the Commissioner of National Housing to purchase the land by document marked V1 on 05.04.1982. As per the document V3, it is evident that the Commissioner rejected the above application on 13.07.1984, as the Plaintiff was not willing to sell the property. Accordingly, the Defendant had taken steps to deposit rent only after he failed to purchase the property. Furthermore, it was revealed in the evidence given by Gunadasa Perera, Revenue Officer, that the Defendant started to deposit rent in the Town Council from 1985. Therefore, the inference that could be arrived at from the above evidence and the circumstances is that the Defendant had started to deposit rent only from 1985.

Then a question arises: Would the depositing of rent from 1985 by the Defendant amount to a tenancy agreement between Plaintiff and Defendant? As the evidence suggests that the Defendant had come into occupation of the premises as a licensee of the Plaintiff, mere depositing of rent in the Town Council shall not give rise to a tenancy agreement between the parties. Because meeting of the minds of the parties is an essential component for a contract to be constituted in law. There is no evidence to support that the Plaintiff agreed to enter into such a rent agreement. It is further observed that there is no evidence to the extent

that the Rent Board has ordered to deposit of any rent in the Town Council. Hence, the Defendant is not legally entitled to change the nature of her possession from a licence to tenancy on her initiative. The legal maxim of civil law, "*Neminum sibi ipsum causam possessions mutare posse*", simplifies the situation, which means that a person having possession of property by one right or title cannot, by his own and without the intervention of some new title, change the character or title by which he previously held such property. Hence, this Court is of the view that the deposit of rent from 1985, as specified by the Defendant, does not support her claim of tenancy. In view of the foregoing reasons, I view that the Defendant has failed to prove that he is the tenant of the Plaintiff.

The learned District Judge in her judgement, answering issue No. 5, has stated that

> "(5) *එකී නිවසස්ථානය 1972 අංක 07 දරණ ගෙවල් කුලී පනතින් පාලනය වෙන නිවසස්ථානයක්ද?*
>
> *උ: විය හැකිය.*
>
> *එයට සාක්ෂි ඉදිරිපත් කල නොමැත. තවද <u>එම ලියවිලි ඔප්පු කිරීමට යටත්ව ඉදිරිපත් කර ඇති නමුත් ඔප්පු කර නැත.</u>"*
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> **(Vide, Judgement dated 24 April 2000 at page 161 of the Brief)**

The Defendant contends that all the documents, V1- V5(1)-(6) marked by the Defendant were proved by calling relevant witnesses. Therefore, the Defendant claims that the learned District Judge erred in holding that the above documents were not proved and failing to consider the above documents in evaluating the evidence. It is observed that the above-mentioned documents of concern are as follows.

V1- The Defendant's application to the Commissioner of National Housing to purchase the subject premises

V2- Inquiry by the Commissioner

V3 - Decision of the Commissioner

V4 – Summary of rentals paid to Town Council

V5(1)-V5(6) – Rent receipts reflecting the deposits made to the Town Council

All the above documents had been marked subject to proof. In order to prove documents V1, V2, and V3, a witness named Manna Dewage Sumanawathi from the National Housing Development Authority, and to prove documents V4 and V5(1)-V5(6), a witness named Gunadasa Perera from Kotikawaththa Pradeseeya Sabawa had given evidence. No objections were taken in respect of such documents at the closing of the Defendant's case. Hence, the above documents were to be considered as proven documents. The learned District judge has failed to take notice of the fact that those documents have been proved in evidence. However, such documents have no bearing on issue No. 5, which concerns the applicability of the Rent Act. Further, no evidence has been led to support the position that the premises in dispute is governed by the Rent Act. Moreover, as mentioned above, as the Defendant failed to prove that he is the tenant of the premises, no question arises as to the applicability of the Rent Act to the subject premises. Thus, I am of the view that no material prejudice has been caused as a result of the above oversight.

It was submitted that the documents marked by the Defendant have not been transmitted to the Court of Appeal with the District Court brief. Upon perusal of the judgement of the learned District Judge, it appears that such documents were available to the learned District Judge at the time the judgement was delivered. The Defendant also conceded in her written submission and submitted that the misplacement of documents shall not cause any prejudice to the Defendant and that evidence contained in the proceedings of the case itself is sufficient to demonstrate her position. The Court is of the view that since the relevant proceedings and the undisputed submission made by the parties concerning the relevant document make no prejudice to both parties.

The learned Counsel for the Defendant submitted in his written submission that the Plaintiff, on whom the burden lies to establish the existence of a leave and license, failed to discharge his burden of proof in establishing the same through the testimony of any other witness, except on his own. In the instant case, the Defendant admitted the title to the

subject premises of the Plaintiff. In a *Rei Vindicatio* action, the burden lies on the Plaintiff to prove that the title against the Defendant is with him. Our law recognises an exception to the general principle that the burden of establishing title in a vindicatory action falls on the Plaintiff where the Defendant admits the Plaintiff's title. In Wijetunga v.Thangarajah 1999(1) SLR 53, it was held that in a vindicatory action, when the legal title to the premises is admitted, the burden of proof is on the Defendant to show that he is in lawful occupation. It was observed in Candappa nee Bastien v. Ponnambalampillai 1993(1) SLR 124 at 187 as follows: *"Since title to the premises was admittedly in the plaintiff, the burden was on the defendant to show by what right he was in occupation of the premises*."

Gunasekara v. Latiff 1999(1) SLR 365 is a case where the Plaintiff instituted action seeking a declaration of title, ejectment, and damages. The Defendants claimed to be the tenants of the premises. It was held that "*it would be seen, therefore, that the plaintiff is entitled as the absolute owner of the premises to the possession of such premises. If the defendants claim that they are the tenants of the premises in suit, the burden lies on them to prove that fact, and on their failure, the plaintiff would be entitled to an order of ejectment of the defendants from the premises in suit.*"

Accordingly, in the instant case also, once the Defendant failed to discharge her burden, the Plaintiff would be entitled to obtain a judgement in favour of the Plaintiff. No burden whatsoever lies on the Plaintiff to establish the existence of leave and license.

The learned Counsel for Defendant has taken up another stance in her submission that the learned District Judge has failed to appreciate the delay of the Plaintiff in seeking to recover possession of the premises which effect the Plaintiff. However, in the evidence, the Plaintiff has justified the delay. The Plaintiff has stated that as the Defendant agreed to vacate the premises, the Plaintiff had not taken legal action to evict the Defendant until it was required for the Plaintiff to give the same to her daughter.

The paramount duty of this Court is to ensure that there are no miscarriages of justice in the administration of justice, and any miscarriage that does occur can be rectified on appeal. However, in the instant case, even though the learned District Judge had failed to adequately evaluate and appreciate the evidence on certain issues, in analysing the evidence before the District Court, this Court could also only arrive at the same conclusion as the learned District Judge. Accordingly, I view that no miscarriage has occurred. In the circumstances and the reasons given above, I hold that the Defendant is not entitled to any of the reliefs prayed for in the Petition of appeal. Appeal is dismissed without cost.

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal