

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

C.A No: 1323/96 (F)

D.C Hambanthota 1089/L

Karunaratna Abeydeera,  
No:4, Main Street,  
Thissamaharamaya.

**DEFENDANT-APPELLANT**

Vs.

Mirisse Galappaththige  
Edvin de Silva,  
Halabagaswala,  
Thissamaharamaya.

**PLAINTIFF -RESPONDENT.**

Before: A.W.A Salam, J

Counsel : Gamini Hettiarachchi for the Defendant-Appellant.  
Nimal Muthukumarana for the Plaintiff -Respondent.

Argued on : 31.05.2012.

W/S Tendered on: 31.05.2012.

Decided on : 29.11.2012.

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A W A Salam, J

This appeal arises on the judgement dated 1<sup>st</sup> November 1995. The facts briefly are that the plaintiff filed action against the defendant seeking a declaration of title to the premises in question and ejectment of the defendant therefrom. Further the plaintiff sought to recover damages from the defendant in a sum of Rs.1000/- and continuing damages at the rate of rupees 50/- per month. The defendant in his answer took up the position that he was in occupation of the premises in question as a tenant and that he had entered the subject matter of the action and commenced the occupation of the premises under one of the predecessors in title of the plaintiff namely one David Silva. In addition the defendant also took up the position that he had purchased undivided rights from and out of the subject matter and therefore the plaintiff cannot in any event maintain the present action.

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The main question arose for determination at the trial was whether the defendant a tenant or a licensee. The learned district judge having considered the evidence placed by both parties came to the conclusion that the defendant is merely a licensee and cannot be considered as a tenant. In order to come to this conclusion the learned district judge has taken into consideration particularly the evidence given by the wife of David Silva who stated that the defendant was allowed to occupy the premises in question free of rent. Further the learned district judge has strongly relied on the credibility of the plaintiff and his witnesses on the disputed question.

Even though the defendant had claimed that he paid rents to David Silva none of the rent receipts had been produced at the trial. The learned trial judge has also observed that the defendant has failed to establish his claim that he paid rent to the local authority. Taking into consideration the evidence led at the trial the learned district judge was of the view that the defendant was not a tenant and that he had neither paid rent to David Silva or deposited the same with the local authority.

The defendant being a licensee has had no right to dispute the ownership of the successor in title of David Silva. This being a declaration of title suit the plaintiff is entitled to assert his title against a trespasser without making the other co-owners parties to the proceedings. Relying on this principle the learned district judge had decided that the plaintiff is able to maintain a declaration of title suit against the defendant and that the defendant is liable to be ejected from the premises.

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In the circumstances the judgement of the learned district judge appears to me as quite consistent with the evidence led at the trial. The principles of law applied by the learned district judge to the dispute in question also appears to me as flawless. For reasons stated above this appeal stands dismissed.

There shall be no costs.

Judge of the Court of Appeal.

vkg/-