

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

Gunasena Amarasinghe
of No. 134/4,
Kalapaluwawa,
Rajagiriya.

Plaintiff

Vs.

W.K. Robert
of No. 284/2,
Kalapaluwawa,
Rajagiriya:

Defendant

CA 199/99(F)

DC Colombo Case No. 17401/L

Gunasena Amarasinghe
of No. 134/4,
Kalapaluwawa,
Rajagiriya.

Plaintiff-Appellant (deceased)

Janaki Dilrukshini Amarasinghe
Of No. 75, Negombo Road,
Dunagaha.

Page | 2

Substituted-Plaintiff-Appellant.

Vs.

W.K. Robert
of No. 284/2,
Kalapaluwawa,
Rajagiriya.

Defendant-Respondent.

BEFORE :A.W.A. SALAM, J.

COUNSEL : C.E. de Silva for the Substituted-Plaintiff-
Appellant and J.W.P. Ekanayake for the Defendant-Respondent.

DECIDED ON : 03.12.2012

A.W.A. Salam, J.

This appeal has been preferred against the judgment dated 17.02.1999. By the said judgment the learned District Judge dismissed the Plaintiff's action on the basis that the Defendant cannot be ejected from the premises in suit as he is a

tenant of the premises. The facts briefly are that the Plaintiff let to the Defendant the subject matter of the action on an indenture of lease and the Defendant having failed to hand over vacant possession continued to occupy the same. The Plaintiff sued the Defendant on the basis of his being a trespasser. The Defendant in his answer took up position that he became a tenant of the premises by operation of Law, after the indenture of lease having come to an end. Admittedly over this dispute parties have gone before the Rent Board and the Rent Board has in fact made a determination that the premises in suit is a business premises and the status of the Defendant is that of a tenant.

The Plaintiff has participated at the inquiry held by the Rent Board although he was absent only on the day the order of the Rent Board was pronounced. The Plaintiff has not challenged the decision of the Rent Board in any proceedings. As the Rent Board had after inquiry decided that the Defendant is a tenant, the learned District Judge has held that he cannot treat the Defendant as a trespasser. In the circumstances relying on the documents produced by the Defendant, the learned District Judge has held that the Plaintiff is unable to maintain the action to eject the Defendant as is presently constituted.

Having given my anxious consideration to the facts revealed at the trial and the approach adopted by the learned District Judge towards the resolution of the dispute, I am unable to find fault with his decision.

Page | 4

The decision of the learned District Judge is quite consistent with the facts established at the trial. Further the law applied to the proved facts is also not blameworthy. As such, I am not inclined to interfere with the findings and the decision of the learned District Judge. In the result this appeal stands dismissed subjects to costs.

JUDGE OF THE COURT OF APPEAL.

NR/-