

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

Sitty Januba Thahir,  
No. 23, Bandaranayake Place,  
Pussellawa.

**Plaintiff**

C.A. No. 236 / 2000 F

**Vs.**

D.C. Gampola No. 2178 / L

1. H.P. Waidyaratne Wijegunatilake  
No. 297, Nuwaraeliya Road, Pussella.
2. Ramaiah Dhanapakyyam,  
No. 449, Nuwaraeliya Road, Pussella.
3. Weerasekera Mudiyansele  
Ruchirasighe Weerasekera,
4. Badde Withanage Don Upali  
Piyasena Witharana,
5. Badde Withanage Don Ananda  
Piyasena Witharana,
6. Badde Withanage Don Dayananda  
Piyasena Witharana,  
All of Nuwaraeliya Road, Katukitula.

**Defendants**

**And Now Between**

Ramaiah Dhanapakyyam,  
No. 449, Nuwaraeliya Road, Pussella.

**2<sup>nd</sup> Defendant-Appellant**

**Vs**

Sitty Januba Thahir,  
No. 23, Bandaranayake Place,  
Pussellawa.

**Plaintiff -Respondent**

BEFORE : UPALY ABEYRATHNE J.

COUNSEL : Sunil Abeyratne with Hasika Jeewani for the 2<sup>nd</sup>  
Defendant Appellant.  
M.C.M. Munir with Rajith Weerasinghe for the  
Plaintiff Respondent

ARGUED ON : 25.11.2011

DECIDED ON : 17.01.2012

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted an action against the 1<sup>st</sup> to 6<sup>th</sup> Defendants in the District Court of Gampola seeking inter alia a declaration that she was the owner of the premises described in the schedule to the plaint. The Respondent in her plaint further averred that the 2<sup>nd</sup> Defendant Appellant (hereinafter referred to as the Appellant) who came in to occupation in the premises in suit as a tenant, after ceasing his lawful tenancy, in collusion with the 1<sup>st</sup> Defendant, had refused to hand over the possession and after the institution of the action the Appellant had fraudulently purchased the 1<sup>st</sup> Defendant's rights to the said land and thereafter the 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Defendants were acting in connivance with the 1<sup>st</sup> Defendant and the Appellant.

The Appellant in his amended answer pleaded that he became the owner of the said premises described in the schedule to the plaint by deed No 782 dated 11.05.1997.

The case proceeded to trial upon 12 issues. The learned District Judge after trial delivered judgment in favour of the Respondent. Being aggrieved by the said judgment dated 17.02.2000 the Appellant preferred the instant appeal to this court.

It is apparent from issues No 7, 8 and 11 that the Appellant's position at the trial was that since he was the lawful tenant of Dayananda Vitharana, the Respondent cannot file a *rei vindicatio* action against the Appellant.

The Respondent had admitted the tenancy of the Appellant. The Respondent in her evidence at page 62 of the brief has admitted that the Appellant has been in occupation of the premises in suit as a tenant for 20 years. It also appears from the Respondent's title deed No 1620 that he has purchased a land from Dayananda Vitharana in extent 60 feet in length and 15 feet in breadth with the garage building standing thereon. The Respondent, at the trial, has admitted that he purchased a portion of land from a larger land in extent 75 feet in length and 24½ feet in breadth. The Respondent has further admitted that the same land had been sold to the Appellant by deed No 119 dated 13.01.1990 (P 2). According to the said deed P 2 the said larger land is a portion of an undivided land.

In the said premise the learned counsel for the Appellant contended that the Respondent had failed to establish the identity of the corpus and the title for the same. It is apparent from the evidence of the Respondent that at the trial he had failed to identify the corpus by reference to a sufficient sketch, map or plan.

The learned counsel for the Appellant further submitted that the learned District Judge has answered the issues without analysing the evidence properly. Since the Respondent has admitted the tenancy of the Appellant a

question would arise as to whether the Respondent is entitled to institute a vindicatory action against the Appellant. Section 22 of the Rent Act No 7 of 1972 stipulates the procedure to be adopted in proceedings for the ejection of a tenant.

In the case of *Nandawathie Silva Vs. Manuratna* (2002) 3 Sri L.R 201 it was held that “The defendant-appellant being a tenant under the plaintiff is entitled to seek protection under the provisions of the Rent Act. Such statutory protection comes to an end only upon (a) by handing back of the premises to the landlord or (b) by order of a competent court. The common law right of a landlord to institute action for an order of ejection of a tenant is curtailed by the provisions of the Rent Act.”

It appears from the impugned judgment that the learned District Judge has answered the issues No 7, 8 and 11 without having due consideration to the statutory provisions contained in the Rent Act. In the said circumstances I am of the view that the issues No 7 and 11 should have been answered in the affirmative and issue No 8 in the negative. Therefore I set aside the judgment of the learned District Judge dated 17.02.2000 and allow the appeal of the Appellant with costs.

*Appeal allowed.*

Judge of the Court of Appeal