

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

CA 848/96 (F)

DC Kegalle Case No. 133/RE

S.A. Dissanayake
63, Polgahawela.

Plaintiff-Appellant.

Vs.

H.P. Piyasena
127, Kobbawala Junction,
Galigamuwa town.

Defendant-Respondent.

BEFORE : A WA Salam, J.
COUNSEL : Thusith Wijekoon for the Plaintiff-Appellant
and Sunil D.B. Abeyrathne for the Defendant-Respondent.
ARGUED ON : 02.06.2011
W/S TENDERED ON : 29.08.2011
DECIDED ON : 13.12.2012

A W A Salam, J

The plaintiff-appellant (hereinafter referred to as the appellant) filed action against the defendant seeking inter alia a declaration that he is the owner of the property described in the schedule to the plaint and ejection. Further he sought damages in a sum of Rs.350 from the defendant and in addition a sum of Rs.25 per month until the vacant possession of the subject matter is handed over. The plaintiff appellant pleaded that he became entitled to the subject matter of the action by virtue of deed bearing No 11440 dated 16 January 1968. Subsequently, the appellant has leased out the subject matter to the defendant for a period of six months in November 1972. At the end of the said period of six months the defendant had refused to hand over vacant possession of the subject matter to the appellant and continued to remain on the subject matter.

From the time the lease came to an end the defendant paid rent to the appellant at the rate of Rs.20 per month up to 1982. In this background the appellant had retired from Ceylon tobacco Company where he worked and by reason of the lack of means he decided to launch a new venture. For that purpose the appellant wanted to regain possession of the subject matter in order to carry on a business. Therefore, the

appellant in compliance of the provisions of the Rent Act No 7 of 1972 sent a quit notice to the defendant on 16 October 1984 with copies to the Commissioner of National Housing. However, the defendant did not hand over possession of the subject matter to the appellant and continued to remain on the subject matter. As such the plaintiff sought the relief that he had prayed for in his plaint.

- The defendant in his answer inter alia took up the position that he had not fallen into areas of rent and in any event the appellant is not entitled to regain possession of the subject matter of the action. There was no dispute that the defendant is the tenant of the appellant.

The matter of the dispute proceeded to trial on several issues. The issues suggested by the appellant included as to whether the defendant had fallen into areas of rent from 1983 and whether the subject matter is required for the occupation of the appellant in order to launch a new venture. At the conclusion of the trial the learned district judge held that the appellant has failed to establish the cause of action that the defendant had fallen into arrears for more than three months prior to the institution of the action and also had failed to establish that the premises in question is required for him to carry on his own business. As regards the allegation that the defendant has failed to pay the rent for the period of time

referred to in the issue suggested by the plaintiff, the learned district judge having carefully analysed the evidence come to the conclusion that the defendant was in fact not in areas of rent as claimed by the appellant. The learned district judge has referred to the various payments of rent made by the defendant by way of cash and a cheque. Calculating the rents paid by the defendant the learned district judge has come to the firm conclusion that the defendant was never in arrears of rent as alleged by the appellant prior to the institution of the action and therefore refused to consider the cause of action based on areas of rent.

The next question that arose for determination was whether the defendant should be ejected from the premises based on the second cause of action that the appellant was in need of the premises for him to carry on his own business. Section 22 (1) (B) provides as follows.

Such premises, being premises which have been let to the tenant on after after the date of commencement of this act, are, in the opinion of the court, reasonably required for the occupation as a residence for the landlord or any member of the family of the landlord or for purpose of the trade, business, profession, vocation or unemployment of the landlord.

The appellant in his evidence stated that he does not carry on any business on his own. He further stated that he has no substantial income. His claim was that he required the premises in question to enable him to carry on a business of his own. The defendant respondent to this claim of the appellant stated that he owns two other business premises adjacent to the subject matter and another business premises at Polgahawela town. It is interesting to see how the appellant has reacted to this position put forward by the defendant. The appellant in his evidence specifically stated that the property referred to by the defendant as being owned is not in fact owned by him or controlled by him. Further, the appellant pointed out that the other two business premises situated adjacent to the subject matter have been forcibly and unlawfully occupied by certain other parties.

It is to be noted that the appellant in giving evidence at one point of time admitted that he has two more buildings consisting of one room each and that he runs a pharmacy at Polgahawela. When the appellant questioned as to what type of business he was intending to start in the premises, which is the subject matter of the action, his answer was that he had not made up his mind as to the nature of the business to be started therein. On the contrary he said that he had postponed the decision as to what business to be started in the premises. The learned counsel for the defendant has

submitted that this shows the appellant's lethargy in the matter.

In the case of Martin Appuhamy vs. Urban Council Gampaha 62 New Law Report 156 Sansoni, J held to establish that premises are reasonably required for the purpose of the landlord's business in terms of section 13 (1) (C) of the Rent Restriction Act, it is a necessary condition that the landlord's requirement is not remote in the sense that it must be a present requirement, even though not an immediate thought.

The counsel for the defendant has submitted that without knowing the nature of the intended business to be started by the landlord in the premises in an action of this nature, a trial judge cannot consider as to whether the premises are reasonably required for the landlord to carry on his own business in terms of section 22 (6) of the Rent Act. This submission is relevant in some form to decide whether the requirement of the appellant is genuine or whether he attempts to get rid of the tenant in the guise of the premises being required for him to carry on the business of his own.

The appellant has admitted that he has certain other businesses. If it be so he should have been in a position to disclose to court what type of business that he intended to carry on in the premises. The fact that he had not made up

his mind as to what business to carry on in the premises shows that the requirement of the landlord to regain possession of the premises is somewhat remote and certainly not an immediate requirement. The learned district judge in her judgement also has referred to the inability of the appellant to produce certain documents which he had marked at the trial. Even though it is the duty of the learned district judge to have insisted on the production of the documents already marked at the trial as they are documents of court temporarily given custody to the plaintiff the fact that it was not available at the time when the judgement was written reveals that the appellant was not cooperative to resolve the dispute.

The learned district judge has considered at length the evidence given by a person named Lionel Perera who was called by the defendant. According to Lionel Perera the appellant has four other businesses. This position has not been controverted by the appellant in the course of the trial. The learned district judge has specifically stated that adjacent to the building in question there are two rooms belonging to the plaintiff-appellant which are kept closed and as a matter of fact if the appellant wanted to carry on the business of his own he could possibly have made use of the said two rooms which are kept closed. In the circumstances the finding of the learned district judge that the appellant is

not in requirement of the premises in question for him to carry on his own business appears to me as just and reasonable. The said finding is quite consistent with the evidence adduced at the trial and not inconsistent with the law applicable to the issue.

As a result, I am not inclined to interfere with the judgement of the learned district judge dismissing the plaintiff's action. Therefore, this appeal should necessarily fail and accordingly the appeal preferred by the appellant stands dismissed. Taking into consideration the peculiar dispute between the parties I make order that there shall be no costs recoverable by the defendant on this appeal.

Judge of the Court of Appeal

NR/-