

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

Wamakulasooriya Felix Fernando of 'Malsiri',
Rukattanagaha Junction, Kimbulapitiya Road,
Negombo.

Plaintiff Appellant. (now deceased)

C.A. No.: 800/95(F).

K. Mary Margaret Perera of 'Malsiri',
Rukattanagaha Junction, Kimbulapitiya Road,
Negombo.

Substituted Plaintiff Appellant.

D.C. Negombo case No.: 4298/L.

- Vs -

P.L.P. Ethel Freeda Seneviratne of No. 67,
Thalduwa Road, Negombo.

Defendant Respondent.

Counsel: Dr. Sunil Cooray for the Defendant/Respondent.

S.A.D.S.Suraweera with C.A. Boteju for the Plaintiff/Appellant.

Written Submissions: 17-2-2010(Plaintiff/Appellant)

26-3-2010(Defendant/Respondent)

Before: Rohini Marasinghe J

Judgment: 28-6-2010^v

CA 800-95

1. The original Plaintiff/Appellant namely one Felix Fernando filed action against the defendant. The action was to obtain an order directing the defendant to transfer the premises described in the plaint to the plaintiff. The case of the plaintiff was that, the plaintiff and the defendant had an oral agreement by which the defendant agreed to sell the premises in suit to the defendant. The plaintiff averred that based on

this agreement, the plaintiff built two additional rooms, had done repairs, and had taken electricity to the premises in suit. The total expenditure as calculated by the plaintiff amounted to about 12 lakhs. Consequently, the plaintiff sought the transfer of the property in his name. Or in the alternative the plaintiff sought for an order to retain the premises in suit until the said money was paid to him. The facts that the plaintiff is the tenant and the defendant is the landlord of the premises were not in dispute. The monthly rent of the premises in suit was Rupees 60. That too was not in dispute. The fact that the amounts of money reflected in the promissory notes marked as P1 (a) to P1 (e) were received by the defendant was also not in dispute.

The defendant by his answer sought dismissal of the action. After trial the action was dismissed. The plaintiff appealed.

The plaintiff gave evidence at the trial. In his evidence the plaintiff admitted that the defendant was not the owner of the premises in suit now. The deeds by which the defendant had transferred the premises in suit were marked in evidence. Consequently, the court cannot make any order directing the defendant to transfer the property in suit in the name of the plaintiff.

The next two questions were : First, whether the plaintiff could recover the money spent by the plaintiff for the improvements made to the house in question by the plaintiff. And, second, whether the plaintiff could retain the premises in suit until the money was paid to the plaintiff. The plaintiff had not been able to establish the fact that the money was spent on the premises in suit as a result of the oral agreement. Notwithstanding the fact that there was no evidence on that point, the plaintiff cannot sue the defendant for the sale of the property without a written agreement to sell executed by a notary. The Trial Judge had held that the money transaction was an independent transaction which was not related to the sale of the premises in suit. The plaintiff cannot spend for improvements on the rented premises and claim that sum from the landlord -defendant. A tenant has to resort to section 13 of the Rent Act to do any repairs to rented premises. Therefore, taking all these matters into consideration I am of the view that the plaintiff had no cause of action against the defendant. The plaintiff's action had been correctly dismissed. I affirm the judgment.

The appeal is dismissed.

Rohini Marasinghe J

Judge of the Court of Appeal.