

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

Nanayakkara Atulugamage
Robert Silva,
No. 77, Dehiwala Road,
Pepiliyana,
Boralesgamuwa.

Plaintiff

C.A. No. 1017/96F
D.C. Mt. Lavinia No. 411/95/L

Vs.

Pattiyage Nanadasena,
No. 77/7, Dehiwala Road,
Pepiliyana,
Boralesgamuwa.

Defendant

And Now Between

Pattiyage Nanadasena,
No. 77/7,
Dehiwala Road,
Pepiliyana,
Boralesgamuwa.

Defendant-Appellant

Vs.

Nanayakkara Atulugamage
Robert Silva,
No. 77, Dehiwala Road,
Pepiliyana,
Boralesgamuwa.

Plaintiff-Respondent

Before : A.W.A. Salam, J.

Counsel : W. Dayaratne P.C. for the Defendant-
Appellant.
Ranjan Suwandaradne for the Substituted
Plaintiff-
Respondent.

Argued on : 27.08.2010, 29.11.2010 and 25.01.2011

Written Submissions
tendered on : 11.03.2011

Decided on : 26.05.2011

A.W.A. Salam, J.

The plaintiff is admittedly the owner of the property described in schedule 2 of the plaint. He sought a declaration of title to it to be followed by ejectment of the defendant and damages. It is common ground that the larger land described in schedule 1 of the plaint is depicted in plan No 693 as lot B was owned by Ciciliana Silva and it later devolved on **Bandarawathie Mallika Samaraweera.**

The said Mallika Samaraweera caused a division of the said land into 3 lots as per plan No. 1345 dated 06.03.1990. By virtue of deed No. 403

(P1) the Plaintiff became the owner of lot 2 which is the subject matter of this action and set out morefully in schedule 2 of the plaint.

The crux of the Plaintiff's case is that Cyciliana Silva had permitted the defendant to reside on the subject matter and look after the land without any payment of rent and Badrawathie Mallika Samaraweera too, continued with the same arrangement. Subsequent to the Plaintiff having become the owner of the subject matter, he too had permitted the defendant to continue in occupation of the property in dispute until such time the latter was able to find alternative accommodation. As the defendant had failed to find such accommodation, the plaintiff filed the present action.

The pivotal question that arose at the trial was whether the defendant is a tenant in terms of the Rent Act No. 7 of 1972 or whether he is a permissive occupier of the property. It is of vital importance to advert to the position taken up by the defendant when he received the notice to quit. The notice to quit was marked at the trial as 'P2'. By 'P2' the Plaintiff narrated in detail as to how defendant came into occupation of the subject matter as a Licensee of his predecessor responding to 'P2', the defendant replied by P3 dated 16/2/1995 through Messers - W. Dayaratne and Chandrani Dayaratne, Attorneys-at-Law. By 'P3'

the defendant specifically stated that he was in occupation of the premises in question paying a ground rent of Rs. 15/- per mensem.

As a matter of Law the payment of ground rent by any occupier does not extend the protection of the Rent Act and such a contract is governed by the Common Law.

In the circumstances, the reasoning of the learned District Judge for his conclusion that the defendant is a Licensee, is clearly faultless and requires no intervention of this Court in the exercise of appellate jurisdiction. As such this appeal stands dismissed. There shall be no costs.

Judge of the Court of Appeal

NT/-