

In the Court of Appeal of the Democratic
Socialist Republic of Sri Lanka

CA 1169/95 F
DC Negombo 4099/L

D R Wasinton Perera,
No 271, St: Joseph's Street,
Negombo

Plaintiff-Appellant

Vs

B V Siridasa,
No 271/2, St: Joseph's Street,
Negombo

Defendant-Respondent

Before: A W A Salam J

Parties absent and unrepresented

Decided on: 08.03.2011.

A W A Salam, J

The plaintiff filed action against the defendant praying inter alia for a declaration of title to the land and premises described in the schedule to the plaint. He also sought the

ejection of the defendant from the said land and premises on the footing that the defendant is in occupation of an unauthorized construction as a tenant and therefore is liable to be ejected.

The defendant maintained that he was the tenant of the premises in question from 1979 under one Martin Fonseka and from the year 1983 he had been paying rent to the plaintiff. By reason of the admission made by the defendant as regards the ownership of the subject matter, the defendant had to be in his case so as to establish that his occupation was lawful.

The crucial question that came up for determination at the trial was that the tenanted premises in question and unlawful construction as alleged by the plaintiff and if so whether the defendant is liable to be ejected as there cannot be a valid contract of tenancy arising in respect of an unauthorized building.

In the course of the trial, on various occasions several admissions were made by the parties. At one stage the defendant admitted the ownership of the plaintiff to the subject matter and that he had been paying rent to the latter. It was also admitted that there was a tenancy agreement between the

parties. Further case No 1332/RE was also admitted to be proceedings had between the parties.

The matter of the dispute proceeded to trial on 16 issues of which the first two were suggested by the plaintiff and the rest by the defendant.

Although lengthy evidence had been led at the trial the main issue that came up for determination was the question relating to the alleged unauthorized construction and the consequences thereof. At the end of the trial, the learned district judge having examined the evidence adduced by both parties and on their behalf came to the conclusion that the allegation made by the plaintiff as to the unauthorized nature construction had not been established and therefore is not entitled to the benefit of the judgment in Dharmawardana Vs Malawattage 1987 1 SLR 57 and dismissed the plaintiff's action.

The basis on which the learned district judge had decided to dismiss the plaintiff's action, in my opinion cannot form a valid ground of appeal. The learned district judge has correctly analyzed the evidence and applied the law to the facts of the case and therefore the impugned judgment is not liable to be set aside.

In the circumstances, the appeal preferred by the plaintiff merits no favourable consideration.

Appeal dismissed without costs.

Judge of the Court of Appeal