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

D. Babynona
Madinakanda, Payagala..

PLAINTIFF-APPELLANT

C.A 834/96(F)
D.C. Kalutara 3934/L

Vs.

Charlet Vinifreeda Fonseka,
North Payagala.

DEFENDANT-RESPONDENT

BEFORE: Sisira de Abrew J. &
Anil Gooneratne J.

COUNSEL: Both the Appellant and the Respondent are absent and unrepresented

DECIDED ON: 01.02.2011

GOONERATNE J

This is a final appeal from the judgment of the District Court, Kalutara. When this matter came up for hearing on 25.10.2010 before us both parties were absent and unrepresented. As such this court directed the

Registrar of the Court of Appeal, to notice the parties and re-fixed the appeal for hearing on 14.12.2010. However even on the 14th December 2010 parties were absent and unrepresented. Thereafter this court having perused the material, reserved the judgment to a subsequent date. This judgment is delivered having considered the position of both parties from the available material as contained in the brief.

Plaintiff-Appellant filed action in the District Court of Kalutara to recover possession of the premises described in the schedule to the plaint since she had been forcibly dispossessed by Defendant on or about 29.06.1991 and for damages in a sum of Rs. 25,000/- and further damages in the manner pleaded in the plaint. Parties proceeded to trial on an admission (Deed of lease No. 422 of 1949.3.10 and Plaintiff's late husband was the lessee) and ten issues. This being a possessory action, issue No. 3 had been suggested to the effect that since judgment in case No. M.R 3027, Plaintiff-appellant is in possession of the premises in dispute. It is evident that in the above case No. 3027, the Plaintiff had filed action previously against the Defendant for possession and damages. In that judgment Plaintiff was only awarded damages in a sum of Rs. 5000/- and no other relief i.e possession or eviction of Defendant. Therefore the Trial Judge has, in the case in hand correctly answered that issue in the negative. Further by the evidence led at

the trial there is no cogent reason that could be inferred as to how the Plaintiff-Appellant came into possession of the premises in dispute. As such the Defendant's version is more probable.

On a perusal of the judgment we find that the Trial Judge has correctly analysed the evidence and come to a conclusion that the Plaintiff has failed to establish the main question of possession of Plaintiff and not proved issue Nos. 1 – 5 in a manner to be answered in favour of the Plaintiff.

We have considered the evidence led at the trial of both parties and the submissions made to the Trial Court. There is no merit in this appeal, and we find no cogent reason to disturb the findings of the Trial Judge.

Appeal dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Sisira de Abrew J.

I agree.

JUDGE OF THE COURT OF APPEAL