

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

**CA No.1007/95
D.C. Avissawella No. 17622/RE**

B. De Silva,(Deceased)

Plaintiff.

N. De Silva,
82 Yatiyantota Road,
Avissawella.

Substituted Plaintiff/Appellant.

B.D.Karunathilaka,
NO.196, Ratnapura Road,
Avissawella.

Defendant/Respondent

CA

Counsel: Upali De Almeida with R.J.U De Almeida for
Plaintiff/Appellant.

Rohan Sahabandu with Athula Perera for
Defendant/Respondent.

Arguements: 22-1-09, 3-2-09, 30-9-09, 6-10-2010.

Written Submissions: 20-2-2010

Before: Rohini Marasinghe J

Judgment: 25-1-2011.

CA 1007(95)

The original plaintiff instituted action in the District Court seeking inter alia ejection of the defendant-respondent (hereinafter referred to as defendant) on the basis of arrears of rent. The respondent filed answer denying that he

was in arrears of rent. At the trial “admissions” were recorded to the following effect;

1. That the landlord of the premises in suit was late P.G De Silva, and upon his death the defendant had attorned to the original plaintiff as the landlord.
2. All rents paid to said P.G. De Silva were acknowledged.
3. The defendant is the tenant of the premises in suit
4. The premises in suit is governed by the Rent Act No. 7 of 1972. Its' standard rent did not exceed more that 100 per month
5. The Notice to quit dated 25-2-1984, was received by the defendant.

The parties had raised 7 issues for determination by court.

After trial the judgment was entered on 27-6-1995. By the said Judgment the action of the plaintiff was dismissed. This appeal is against that dismissal.

During the pendency of the trial the original plaintiff had died and her daughter the present appellant was substituted. .

The case of the original plaintiff namely, Mrs P.G.De Silva was briefly as follows;

The defendant was the tenant of her late husband who died on 23-9-1982. And upon the death of her husband the defendant had attorned to her as the landlord of the premises in suit. Her contention was that although the defendant had atoned to her as the landlord, he had failed to pay the rents for

a period of more than 3 months after it became due. She further averred that the rents paid by way of money orders after the death of her husband were duly acknowledged on her behalf by her Attorney- at -Law. However, she submitted that the said money orders had been drawn in favour of her late husband and thus could not be encashed by her. The defendant was informed of this fact. The defendant whilst denying that they were so drawn agreed to deposit the said money in the name of "Mrs P.G. de Silva " at the office of the Local Authority, upon the said money already paid as afore mentioned being refunded to him by the postal authority. (vide P5) Notwithstanding his undertaking to do so, the original plaintiff contended that the defendant deposited rents in the Local Authority in the name of "MR P.G. de Silva". (vide P1) In the circumstances, the plaintiff contended that the payments so made could not be classified as "tender" of payments to the landlord.

The Defendant on the other hand stated that the payments made to the Local Authority were payments made in terms of section 21 of the Rent Act. Consequently, he claimed that it fell within the category of "tender of rents to the landlord."

The main issue in this case was whether the defendant was in arrears of rent after it became due.

The original plaintiff had not given evidence at the trial as she was in very frail health. The evidence for the plaintiff was given by the clerk who had been in the office of late P.G. De Silva who was an Attorney-at-Law. This case was based mainly on documents. The legal question for determination was

Justice Ramanathan delivering the judgment in that case held that the payment of rent to the Urban Council was sufficient compliance with section 21 of the Rent Act 7 of 1972.

This rule was changed in the case of **Violet Perera v Asilin 1996 (1) SLR p 01**. The said case held that;

“But if it turns out that the real landlord is not the person in whose favour such instrument is drawn, then clearly the tenant cannot be regarded as having paid the rent to the landlord of the premises”. It further stated that “In case of doubt as to who the landlord is the tenant will be well advised to pay the authorized person”.

The “authorized person” is defined in section 21(4) of the Rent Act.

Finally, the conflicting decisions in relation to interpretation of section 21 of the Rent Act was resolved upon a reference made in terms of Article 132(3) of the Constitution in connection with the appeal of **Gunasekera v Jinadasa 1996 (2) SLR p 115** held that “...payment to the authorized person in the name of the person who is not the landlord does not discharge the tenant’s obligation to the landlord (pages 116 and 120)

However, quite apart from the binding precedent of the decision in the case of **Gunasekera v Jinadasa**, in the present case the attornment to the original plaintiff by the defendant had been recorded as an admission. Therefore, there could not have been any doubt in the mind of the defendant as to who his landlord could be in the premises in suit. The testimony of the defendant throughout the case was that he could not ascertain the present owner of the premises in question. It must be noted that the contract of tenancy is founded on the contractual nexus between the landlord and the tenant. The cases **Alles**

v Krishnan 54 NLR p 154 and Visvalingam v Gajweera 56 NLR p 111 both offer authority for this proposition.

As I have mentioned above, the defendant's contention that he made payments of rents to the Local Authority in the name of "Mrs PG De Silva" is contrary to the documents marked as P1 and P2. In the circumstances, the payment of rents in the name of a person other than the original plaintiff violates section 21 of the Rent Act. In the circumstances, the respondent is liable to pay the arrears of rents as prayed for in the plaint. The defendant is also liable to be ejected from the premises in suit under the terms of the Rent Act.

The basis of the learned trial judge that he was bound to follow the decision of the case of Mallika Perera has now been interpreted by a bench of five judges in the case of Gunasekera v Jinadasa.(ibid) Therefore, for the reasons mentioned above I allow the appeal and set aside the judgment of the District Court.

The appeal allowed.

Rohini Marasinghe J

Judge of the Court of Appeal.