

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

Dikwella Widanage Jardiyas
No 25, Main Street
Thissamaharama

PLAINTIFF (DECEASED)

Dikwella Widanage Hansawathi
No 25, Main Street
Thissamaharama

SUBSTITUTED- PLAINTIFF

VS

Sellahewage Sugathadasa
No 13 Magama Road, Kasingama
Thissamaharamaya

DEFENDANT

AND BETWEEN

Court of Appeal case No
CA 1099/95

Sellahewage Sugathadasa
No 13 Magama Road,
Kansigama
Thissamaharamaya

District Court Hambantota
RE 148

DEFENDANT -APPELLANT (DECEASED)

VS

Dikwella Widanage Jardiyas
No 25, Main Street
Thissamaharama

PLAINTIFF -RESPONDANT

(DIED)

Dikwella Widanage Hansawathi
No 25, Main Street
Thissamaharama

SUBSTITUTED- PLAINTIFF -RESPONDENT

AND NOW BETWEEN

Galappaththige Nenaseeli
No 13 Magama Road,
Kasingama
Thissamaharamaya

Counsel: Priyantha Ganegoda for

Defendant/Appellant.

Anura Maddegoda for

Plaintiff/Respondent.

Written Submissions: 19-2-2010 (Defendant/Appellant)

23-6-2008 (Plaintiff/Respondent)

Before: Rohini Marasinghe J

Judgment:31-1-2011

CA 1099-95

The Plaintiff-Respondent hereinafter referred to as the plaintiff had instituted an action on the basis *inter alia* that the defendant is in arrears of rent of the premises more fully described in the schedule to the plaint. The fact that the Defendant/ Appellant hereinafter referred to as appellant was the tenant of the plaintiff was not in dispute.

After trial the learned trial judge delivered the judgment on 5-12-1995. This appeal is against that judgment.

At the trail the daughter of the plaintiff had given evidence. In her evidence she had stated that the monthly rent of the premises in issue was Rupees 60. The defendant was the tenant of her father. The father had died during the pendency of this action. The witness further stated that the appellant was in arrears of rent since December 1984.

The defendant in his evidence had stated that he was not in arrears of rent as he had incurred the following expenses in relation to these premises;

1. Rupees 4800 for the purpose of obtaining electricity.
2. Rupees 3500 for the purpose of building a wall
3. Rupees 3600 for the purpose of building a lavatory.

The contention of the appellant was that, he spent on improving the premises as the plaintiff had promised to sell the premises to him. The trial Judge had held;

" විස්තරයෙන් උදාහරණයක් ලෙස 1985 ජනවාරි
මාසයේ සිට ගෙවල් තුළින් ගෙවී ඇත.

විත්තිකයා විසින් ගෙවූ වටයන් සඳහා කෙරෙන ලද
කාලය තුළ වටයන් අදාළ වූයේ ඉඩම් මුදල් කිරීම සඳහා
විසින් මෙම මුදලට ගෙවූ මුදල තුළින් කිරීම
සිදු කෙරුණු බවට පෙනේ. එහෙයින් මෙහි පැවැත්වූ ප්‍රශ්නයක්
නොවේ. ගෙවීම් හා විත්තිකයා අතර ඇති වූ
ලද මුදල මුදල් මාරු කිරීමේ බැඳීමක්
සාක්ෂි සහිතව පෙනේ.

(vide page 5 of the Judgment)

Therefore, the learned trial judge had held that there had been no such agreement between the parties to deduct the moneys spent on the premises from the monthly rent. The plaintiff had objected to the structural alterations being made to the premises. The complaint of the plaintiff to the police against the structural alterations has been marked as P1.

The appellant further submitted that rents payable to the plaintiff from December 1984 had been deposited in the Tissamaharama Town Council. The appellant had failed to establish such fact to court. According to the finding of the trial judge the money had been deposited several years after the institution of this action. Consequently, the money had been deposited in

the Tissamaharama T.C. only in 1990. According to the own evidence of the appellant he had not paid rents for the period alleged by the plaintiff. A tenant cannot make repairs or alterations to the premises without the consent of the Land Lord and have that sum deducted from the rent. It is ^{the} land lord's duty to effect repairs and maintain the premises in habitable condition. If however, this duty is neglected the Rent Board of the area to which the premises belong is empowered in terms of section 13(1) of the Rent Act 7 of 1972 to make order directing the land lord to provide amenities discontinued or with held or to carry out such repairs or decoration as may be specified in the order made by the Rent Board on an application made to it by the tenant, or upon an inspection of such premises carried out by it or under its' authority. If however, the land lord fails to effect repairs or redecoration ordered then Board is entitled to authorize the tenant 'to carry out such repairs or redecoration and to incur for the purpose of expenditure not exceeding such amount as may be specified in that behalf in the order.'"

The law as it stands today after the Rent (amendment) Act No 55 of 1980, is that in the event of the land lord effecting repairs he is entitled to charge from the tenant 120 per cent of the sums so spent spread over a period of five years after sanction is obtained from the Rent Board for such increase in the rent. It is then apparent that in the case of rent controlled premises the

the rent. It is then apparent that in the case of rent controlled premises the tenant is not entitled to set off any sum whatsoever in respect of repairs effected. Additionally, none of the additions or alterations have been sanctioned by the land lord. It is not the tenant's contention that he sought the approval of the Local authority for provision of such amenities. The tenant is not as of right entitled seek amenities which he never enjoyed at the commencement of the tenancy. In the circumstances the tenant is not entitled to improve the tenanted premises without the knowledge of but at the expense of the land lord and contrary to the provisions of the Housing and Town Improvement Ordinance.

Appeal dismissed.

Rohini Marasinghe J

Judge of the Court of Appeal.