

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

M. David Fernando
of No. 459,
Galle Road,
Kalutara North.

C.A. Appeal
No. 879/95 (F)

PLAINTIFF

D.C. Kalutara
Case No. 3347/L

VS.

M. Ranjith Cooray,
Of No. 455,
Galle Road,
Kalutara North.

DEFENDANT

AND NOW BETWEEN

M. Ranjith Cooray
Of No. 455,
Galle Road,
Kalutara North.

DEFENDANT -APPELLANT

VS.

M. David Fernando
Of No. 459,
Galle Road,
Kalutara North.

PLAINTIFF-RESPONDENT

Counsel : C.E. De Silva for the Defendant/Appellant.

Ranjan Guneratne for the Plaintiff/Respondent

Argument: 2-12-2009

Written submissions: 26-8-2009, 8-2-2010 (Defendant/Appellant)

26-8-2009, 4-3-2010 (Plaintiff/Respondent)

Before: Rohini Marasinghe J

Judgment: 17-1-2011.

CA 879/95(f)

Rohini Marasinghe J

The Plaintiff/Respondent hereinafter referred to as plaintiff instituted action in the D.C. Kalutatra. By the said action the plaintiff sought *inter alia* an order that he be declared the rightful person to possess the premises in suit without any obstruction from the defendant/appellant hereinafter referred to as the defendant. The case of the plaintiff was that the defendant had caused damages to his wall and placed obstructions to obstruct his access. The defendant by his answer sought a dismissal of the action. After trial the

judgment was entered in favour of the plaintiff. This appeal is against that judgment.

The case of the plaintiff was that he was the tenant of the premises presently in issue having occupied it as it's tenenat since 1952. The premises in suit bear the assessment No 459 Galle Road, Kalutara. Initially the plaintiff was a tenant of one Gunawardene. And thereafter the plaintiff became the tenant of one Appuhamy. The rent for these premises was Rupees 30 per month. The rent receipts have been marked as P 2- P6.

The premises had been sold to the defendant in 1982. It is thereafter, that this dispute had arisen. The plaintiff averred that he was not aware of the new ownership of the premises in suit. At that point he had filed action before the Rent Board to ascertain who the new land lord of these premises now in suit. After an inquiry the Rent Board had declared the plaintiff as the tenant and the defendant as the land lord. The said order of the Rent Board has been marked P8 at the trial. The appeal of the defendant to the Rent Board of Review had been dismissed.

The case of the defendant was that the plaintiff had declined to attorn to him as the new land lord. And, the defendant had averred that by virtue of that refusal the plaintiff cannot now claim any benefits as his tenant under the Rent Act. The defendant had further alleged that the plaintiff had caused damage to the premises in suit. The issue no 13 was raised by the defendant on that basis. The plaintiff's contention on this point was that a portion of the house was broken on the direction of the Commissioner of Lands. The relevant gazette notification was marked as P11.

The main dispute was the question of tenancy. The trial judge had dealt with that issue adequately. The case for the defendant on this point was that the plaintiff had declined to attorn to the defendant as the new land lord. (V4) And, additionally, the defendant contends that the plaintiff by the letter V6 had repudiated the contract of tenancy. The letter marked as V6 was a letter sent by the plaintiff to the defendant. By that letter he had informed that the house in suit was not taken by the plaintiff on rent from the defendant. And that in fact the house was taken on rent from one Appuhamy. In this letter the defendant's claim was a repudiation of the contract of tenancy by the plaintiff. I do not agree with the submissions of the defendant on this point, Firstly, the plaintiff had not been aware of the sale of the property. The letter

sent by the defendant informing that fact had not been received by the plaintiff. The fact that the plaintiff was aware of the new ownership should have been established by the defendant. To the contrary the trial court was of the view that the plaintiff was not aware of that fact. In order to prove that a party has repudiated a contract it must be established that the defaulting party had made his intention clear against a balance of probabilities that he no longer intends to perform his side of the bargain. The proof of such an intention can be ascertained from the attendant circumstances. In this case the plaintiff had established to court that he was not aware of the change of ownership. Additionally, the plaintiff had further stated that, as he was not certain as to who the new owner was he had filed action in the Rent board to ascertain that fact. As provided by the Rent Act, when a tenant is not certain as to who his land lord is, such party can ascertain that fact by filing action in the Rent Board. Therefore, these circumstances go to establish what the motive of the tenant was. His motive as I see was not to repudiate the contract of tenancy as alleged by the defendant. I do not think it is necessary to state here the law concerning the repudiation of contract. It is sufficient to state that the defendant had not established that the conduct of the plaintiff amounted to a repudiation of the contract of tenancy. The defendant had raised that issue at the trial on the

basis of the plaintiff's repudiation of the contract. But there was no such repudiation here. I think I have answered that question adequately.

The plaintiff had stated in his evidence that he had not received the letter V4 sent by the defendant directing him to attorn to him as the new land lord. And the learned trial judge had accepted the evidence of the plaintiff on this point. Consequently, the trial judge had come to the conclusion that the evidence disclosed that the plaintiff was a protected tenant. And that the defendant had unlawfully caused damage to the premises and obstructed the plaintiff's access to the toilet and kitchen as alleged by the plaintiff. I see no reason to interfere with that decision.

The appeal is dismissed subject to taxed costs.

Rohini Marasinghe J

Judge of the Court of Appeal.