

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

**C.A. Appeal No. 29/95 (F)  
D.C. Tangalle No. 07/RE**

P.H. Geeganage Ariyathillake,  
Weeraketiya,  
Buddhiyagama.

**Plaintiff**

**Vs.**

S. Joshihamy,  
"Kumidu",  
Mandaduwa,  
Weeraketiya.

**Defendant**

**AND**

S. Joshihamy (deceased),  
"Kumidu",  
Mandaduwa,  
Weeraketiya.

**Defendant-Appellant**

P. Muhandiramge Premalatha,  
"Kumidu",  
Mandaduwa,  
Weeraketiya.

**Substituted Defendant-Appellant**

**Vs.**

P.H. Geeganage Ariyathillake,  
Weeraketiya,  
Buddhiyagama.

**Plaintiff-Respondent**

Case No 29/95.

**Counsel:** Gamini Hettiarachchi for the

**Defendant/Appellant.**

S.N. Vijithsinghe J for the

**Plaintiff/Respondent.**

**Argued:** 27-11-2009

**Written Submissions:** 15-10-2010

**Before:** Rohini Marasinghe J.

**Judgment:** 27-1-2011

Rohini Marasinghe J.

The plaintiff/Respondent instituted this action in the District court of Tangalle seeking inter alia for the ejectment of the defendant on the basis of termination of the tenancy agreement from 30-4-1985. The defendant by his answer sought dismissal of action. After trial the judgment was entered in favour of the plaintiff. This appeal is against that judgment.

The case of the plaintiff was briefly as follows:

The premises in suit bear the assessment No 2/3 situated at Weerakatiya. The said premises were purchased by the plaintiff from one Nanadaseeli in 1984 by deed No 23022. The defendant was a lessee of said Nadaseeli. And on 30<sup>th</sup> April of 1985, the plaintiff had written to the defendant asking him to

quit the premises in suit and hand over the premises. The defendant had refused. The plaintiff filed this action. The plaintiff in his evidence admitted that the defendant had paid the rents up to end of February 1985. And that the defendant was in arrears of rent. The letter of 30<sup>th</sup> April 1985 was to terminate the lease agreement.

The case of the defendant was that the premises in suit were taken on a lease agreement from said Nandaseeli. And that he was not in arrears of rent.

The main ground of appeal was that the learned Judge was in error when he stated that the parties have admitted that the premises are not governed by the Rent Act.

The submissions of the appellant were that the plaintiff had framed the issue No 8. But that the plaintiff had not led any evidence to establish that issue. And that the trial Judge had wrongly held that the premises were not governed by the Rent Act.

The submissions of the plaintiff on this point were that in the evidence he had stated that the premises are situated in an area not governed by the Rent Act. He points to his evidence at page 47 in the appeal brief. In that he had stated;

" ശ്രീമതി ഐ. കെ. മധുസൂദന കുമാർക്കു കീഴിൽ  
സ്ഥിര വാടക വിലയിൽ വാടകയടക്കം  
പ്രദേശം - - - ^

Consequently, the plaintiff was claiming that the premises in suit were not governed by the Rent Act. If the premises were not governed by the Rent Act the burden lay on him to prove that fact. A mere statement that the premises are not within an area controlled by the Rent Act is not sufficient proof of section 2 of the Rent Act. If any premises are out side the operation of the Rent Act, the law that would govern those premises would be the General Law. The learned Judge had proceeded on that basis. The learned Judge erred in law when he made that determination with out any evidence to that effect. The situation of the premises is something that is known to the plaintiff. The court cannot take judicial notice of that fact as submitted by the plaintiff. The plaintiff in his written submissions had stated that the premises in suit were situated in Weerakatya. Therefore, he submits that the premises were out sided the area controlled by the Rent Act. Firstly, there was no evidence to establish that the premises in suit were situated in Weerakatiya. Secondly, there was no evidence to establish that the Weerakatiya is out side the Rent Act. The plaintiff cannot expect the Appeal Court to find out these facts and write the judgment.

I am of the view that the plaintiff had failed to prove the basis of his case. The trial Judge was in error when he held against the defendant on this point.

The plaintiff had further submitted that the defendant in his answer had not denied that the premises were not governed by the Rent Act. Time and again it had bee held that the trial proceeds on the issues, and that once the issues are framed and accepted, pleadings recede to the back ground. The fact that in the answer the defendant had not denied that the premises in suit

are governed by the Rent Act is irrelevant. The plaintiff had raised an issue which he had failed to prove.

The appeal is allowed.

Rohini Marasinghe J  
Judge of the Court of Appeal