IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRİ LANKA.

C.A. No. 916/98(F)

D.C. Trincomalee Case No. 299/L

Ariyadasa Kadawatha,
"Samagi Traders",
57, Tricomalee Road,
Kantale
Defendant-Appellant (Deceased)

Hakmana Arachchige Somalatha,
"Samagi Traders",
57, Tricomalee Road,
Kantale
Substituted-Defendant-Appellant

Vs.

H M Wilson,
No 305, Majitha Mawatha,
Perettuweli,
Kantale
Plaintiff-Resp[ondent

Before: A.W.A SALAM, J.
Counsel: M U M Ali Sabri for the substituted defendant appellant and M H B Moraes for the defendant respondent.
Argued on: 26.11.2010
Written submissions tendered on: 27.12.2010
Decided on: 31.01.2011

A.W. ABDUS SALAM, J.

This suit has been filed to eject the defendant from the subject matter based on the termination of leave and licence granted by the plaintiff. The plaintiff averred that the land and premises described in the schedule to the plaint were part of State forest and uninhabited before 1950. In that year, he claims to have put up a building having cleared part of the said forest and obtained a permit to occupy the same under the Land Development Ordinance. The plaintiff states that after his marriage he took up residence elsewhere and the defendant came into occupation of the subject matter in that year 1974 with his leave and licence. By letter dated 22 March 1993 the plaintiff has revoked the licence granted to the defendant and demanded of him to hand over vacant possession of the subject matter, the non-compliance of which on the part of the defendant has led to the filing of the present action.

The position taken up by the defendant is that the subject matter consisted of four rooms and was in a dilapidated condition.

The matter in dispute proceeded to trial on 13 issues, out of which the first nine were raised by the plaintiff and the subsequent four by the defendant. At the trial the plaintiff gave evidence and thereafter led the evidence of the Grama Niladari named

Samarasekera. He closed his case reading in evidence documents marked as P1 to P8.

The defendant thereafter testified on his own behalf and led the evidence of Kulasiri and closed his case reading in evidence D1 to D12. However, the document marked V10 had not been produced.

At the conclusion of the trial, the learned District Judge decided the matter in favour of the plaintiff. Aggrieved by the said judgment this appeal has been preferred by the defendant. The defendant in the original court throughout the trial had maintained the position that he came to Kantale in the year 1970 and the premises in question at that time was abandoned. He stated that the house in question consisted of four rooms and was in a diiapidated condition. He maintained that he entered into occupation of that premises on his own accord. Since it was in a state of abandonment he claims that he developed the premises and therefore specifically denied that he is a licencee as alleged by the plaintiff.

The evidence of the plaintiff was that his occupation of the subject matter commenced in the year 1950 and that he was granted a permit bearing No.1318 dated 10.1.1967 which was produced at the trial marked as P1. He has got married in the year 1969 and thereafter moved into the village called Perrattuveli. In the absence of the plaintiff the premises in question had been

occupied by his brother. The plaintiff stated that in the early part of 1974 the defendant came into occupation of the land and premises with his leave and licence agreeing to vacate the same whenever required. The said leave and licence granted to the defendant had been revoked by notice dated 22.3.1993. The said notice was produced at the trial marked P2. The receipt of P2 was not disputed. By this notice the defendant has been called upon to handover vacant possession of the premises in question on or before 30.4.1993.

As has been discussed in detail by the learned District Judge, two important matters arise for consideration at this stage; they are:

1. The extent to which the version of the defendant can be believed as regard his entry into the premises.
2. The failure on the part of the defendant to make inquiries as to the ownership of the building which he claimed was abandoned;
3. Failure to reply to the notice to quit.

As regards the entry of the defendant into the subject matter it has to be observed that it is improbable for a person to enter a house whether dilapidated or otherwise, without making any inquiries. The defendant neither had made inquiries in the neighborhood nor has he attempted to find out details regarding the property in question at the Divisional Secretariat. This clearly shows that the entry of the defendant into the premises had taken

place with the consent, knowledge approval and the blessings of the plaintiff.

As stated above, there was no dispute as to the receipt of the notice to quit P2. In that notice the plaintiff has specifically referred to the subject matter with details regarding the permit and informed the defendant that the leave granted for his occupation has been revoked with immediate effect and called upon the defendant to quit from the same and hand over vacant possession on or before 30th April 1993. Admittedly, the defendant had not replied this letter. P2 contained serious allegations concerning the occupation of the subject matter by the defendant. He has been requested to give up possession of the subject matter which he occupied at least for two decades. If the assertion of the plaintiff contained in P2 is incorrect as a reasonable and prudent man the natural reaction of the defendant should have been to reply to P2 and state his mode of possession and deny the allegation imputed to him. In certain circumstances the failure to reply to an important letter such as P2, can give rise to an tacit admission of the claim made in the letter. In has been held in several cases that the failure to reply to certain type of letters amounts to an admission. P2, which sets out clearly the nature of the defendant's possession of subject matter followed by a demand to hand over possession and threatening legal action for

failure or neglect to obey the demand, in my opinion is an important letter which the defendant should have controverted by way of a reply.

The learned district judge has evaluated the evidence of both parties as regards the nature of the defendant's possession and come to the conclusion that the version of the plaintiff is more probable than that of the defendant. In coming to this conclusion he has carefully analyzed the testimony of every witness in relation to their credibility and corroborative value. He has clearly concluded that the version of the plaintiff has been amply corroborated by the evidence of the Grama Niladari. Even though the learned district judge has by inadvertence commented as to answers given by the plaintiff to questions put to him, as being prompt, when the plaintiff had in fact given evidence before his predecessor, such an inadvertent observation in my opinion could not have changed the ultimate decision.

On a perusal of the judgment of the learned distinct judge it is quite apparent that he has analyzed the evidence of every witness in detail and given cogent reasons for his conclusion. The main reasons behind the conclusion of the learned district judge are faultless and therefore, the impugned judgment does not warrant the intervention of this court by exercise of appellate jurisdiction.

For reasons stated, it is my opinion that the appeal preferred by the defendant merits no favourable consideration.

Appeal dismissed with costs.

Judge of the Court of Appeal

Kwk/-