

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

**CA Appeal No.415/98(F)**

D.C.Colombo No. 8632/RE

Leelawathie Ramasamy,  
No.23/3,  
Gunananda Mawatha,  
Colombo 13.

**Plaintiff**

**Vs.**

Welupillai Balakrishnan,  
No.75/2,  
Fisheri Road,  
Colombo 13.

**Defendant**

**And Between**

Leelawathie Ramasamy,  
No.23/3,  
Gunananda Mawatha,  
Colombo 13.

**Plaintiff-Appellant**

**Vs.**

Welupillai Balakrishnan,  
No.75/2,  
Fisheri Road,  
Colombo 13.

**Defendant-Respondent**

**BEFORE** : **K.T.CHITRASIRI,J**

**COUNSEL** : S.Perinpanayagam for the Plaintiff-Appellant  
Samantha Vithana with Ms.Nishanthi Mendis  
for the Defendant-Respondent.

**ARGUED & DECIDED ON:** 31.01.2013

**K.T.CHITRASIRI,J.**

Mr.Perinpanayagam appearing for the plaintiff-appellant informs Court that he has written to the plaintiff-appellant with a copy to her Power of Attorney holder, namely Dr.A.M.Gangatharan requesting her to inform him whether she is pursuing with this appeal. A copy of the said letter written to the appellant and the two receipts of the registered postal article are being tendered to Court by Mr.Perinpanayagam. Registrar is directed to file the said letter and the two receipts to the docket.

In the said letter it is stated that Mr.Perinpanayagam was informed by the Power of Attorney holder of the plaintiff-appellant that it is the desire of the plaintiff-appellant not to pursue this appeal. Moreover, Mr.Perinpanayagam informs Court that he is not received instructions to appear for the plaintiff-appellant either by the appellant or by her Power of Attorney holder.

At this stage counsel for the defendant-respondent submits that the plaintiff-appellant did not appear in Court when the trial was taken up in the District Court. She had neither being present in this Court at any stage. Hence, it is clear that the appellant is not interested in pursuing this appeal.

The plaintiff-appellant had filed this action to obtain possession of the land referred to in the schedule to the plaint and to have the defendant-respondent and his agents evicted therefrom. In paragraph 4 of the plaint it is stated that this action was filed on the basis that the premises in suit falls within the category of "excepted premises" referred to in the Rent Act No.07 of 1972. Learned District Judge in his judgment dated 26.05.1998 which is being impugned by this appeal, has held that the plaintiff had failed to establish that the premises are "excepted premises" for the purpose of the Rent Act. In coming to this conclusion, learned trial Judge had relied on the deed bearing No.9 attested by J.Charles, Notary Public, marked in evidence as P5 and accordingly he had held that the plaintiff was not the owner of the premises on the relevant date, namely on 1.1.1980.

The matters in respect of the occupation and the ownership of the premises as at 1.1.1980 are important matters that need consideration under section 2(4) of the Rent Act. Section 2 (4) (c) of 1972 of the Rent Act reads thus:-

*" residential premises occupied by the owner on January 1, 1980, and let on or after that date".*

In the case of **Hettiarachchi v. Hettiarachi (1994) 2 SLR at 188**, it was held that "when the exemption of the Rent Act is claimed, the plaintiff has to prove that he/she was in occupation of the premises on 1.1.1980 in the capacity of the owner".

Learned Counsel for the defendant-respondent submits that there is no evidence forthcoming to prove that the plaintiff was in occupation of the premises on 1.1.1980. Furthermore, the deed bearing No.9 clearly shows that the plaintiff was not the owner of the premises by that date. Therefore, it is clear that the learned District Judge is correct when he dismissed the plaint on the basis that the premises in suit does not fall within the category of "excepted premises", referred to in section 2 (4) (a) of the Rent Act upon which basis the action had been filed.

In the circumstances, I am not inclined to interfere with the judgment of the learned District Judge.

For the aforesaid reasons this appeal is dismissed with costs.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL