

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRILANKA

Sumithra Perera,
No 02, Bank Road,
Badulla.

Plaintiff

C A 07 / 97 (F)

Vs.

D.C. Badulla 11131 / RE

Somasiri Karunasena Kariyawasam,
Electro Mechanics,
No. 28, Bank Road,
Badulla.

Defendant

NOW BETWEEN

Sumithra Perera,
No 02, Bank Road,
Badulla.

Plaintiff Appellant

Vs.

Somasiri Karunasena Kariyawasam,
Electro Mechanics,
No. 28, Bank Road,
Badulla.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.
COUNSEL : Vijaya Perera with Jeevan Perera and Ms.
Shobani Karunathilake for the Plaintiff
Appellant
Rohan Sahabandu for the Defendant
Respondent
ARGUED ON : 25.06.2012
WRITTEN SUBMISSIONS : 03.10.2011
DECIDED ON : 11.02.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted an action in the District Court of Badulla praying for a judgement to eject the Defendant Respondent (hereinafter referred to as the Respondent) from the premises described in the schedule to the plaint and for damages. The case proceeded to trial upon 19 issues. After trial the learned District Judge dismissed the Appellant's action with costs. Being aggrieved by the said judgment dated 23.12.1996 the Appellant appealed to this court.

The Appellant's case was that by tenancy agreement dated 28.12.1971 the Appellant let to the Respondent the premises bearing assessment No 2 on a monthly rental of Rs. 80/- for a period of 05 years commencing from 01.01.1972. The Respondent paid to the Appellant the said rentals up to July 1976 and thereafter failed and neglected to pay the rentals from August, 1976. Thereafter the Appellant, by letter dated 27.12.1979 sent through her Attorney At Law, gave the Respondent notice to quit and deliver to the Appellant the vacant possession of the

said premises in suit on or before 31.01.1980. The Appellant further averred that the Respondent has admitted that he was in arrears of rent and he has sent a cheque for Rs 1979/- as arrears of rent and later the Respondent has stopped the payment of cheque. He further averred that the premises were excepted premises.

The Respondent whilst admitting the tenancy took up the position that the premises were not excepted premises and he was not in arrears of rent and pleaded a dismissal of the Appellant's action.

It must be noted that although the Appellant has averred that the premises were excepted premises he has instituted the action on the basis that the Respondent was in arrears of rent. Hence I deal with the issue of arrears of rent.

At the trial the Respondent has produced two rent receipts marked D 1 and D 2 to prove the payments of rent and also to prove that he was not in arrears of rent. Said two documents have been admitted as evidence since the Appellant has admitted her signature therein.

The Appellant has contended that the total amount paid on the said two receipts was Rs 4297/- and with the agreed monthly rental being Rs 80/- per month said amount has covered a period of 54 months from 1st January, 1972 on which date the agreement P 1 came in to operation and therefore the said amount was sufficient to cover the rentals only up to July, 1976. Hence the Respondent was in arrears of rent from July, 1976.

In regard to the Respondent's claim to tenancy based on the payments of rent made by D 1 and D 2 it is necessary to consider the course of conduct between the parties as evidenced by the documents produced at the trial. The Appellant, by letter dated 27.12.1979 sent through her Attorney At Law has

informed the Respondent immediate payment of the arrears of rent due from August, 1976. The Respondent, by letter dated 05.01.1980 sent through his Attorney At Law, has informed the Appellant that Austin Perera, husband of the Appellant had collected a sum covering rentals up to the year 1982 and as he was unable to substantiate the said payments at that moment as a matter of precautions forwarding a cheque for a sum of Rs. 1979/- being 03 years rentals up to December, 1979.

According to D 1 dated 19.08.1977 the Respondent had paid a sum of Rs 250/- as the rentals of the premises. Thereafter by D 1 dated 14.10.1977 the Respondent had paid a sum of Rs 4047/- as an advance payment against rent. The Appellant has admitted the said payment of money. Hence D 1 and D 2 crystallise the fact that even after the date complained of namely August, 1976 the Respondent has paid a sum of Rs 4047/- as an advance payment of rent and the Appellant has accepted the same. Accordingly the Respondent by D 1 and D 2 has proved that he has paid rent and he was not in arrears of rent. If so the Appellant cannot now allege that the Respondent was in arrears of rent.

For these reasons the judgment of the learned District Judge dated 23.12.1996 is affirmed and the appeal is dismissed with costs.

Appeal dismissed.

Judge of the Court of Appeal