

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

C.A.No.453/98 (F)

D.C.Kuliyapitiya 11546/RE

Sahibi Marikkar Mohomed Ismail Marikkar
No: 316,
Aswadduma,
Kuliyapitiya

And

No: 05,
Narammala Road,
Kuliyapitiya.

Appellant

Vs.

AAT.Ogastic Basil Markas De Alwis
No: 111,
Madampe Road,
Kuliyapitiya.

Respondent

C.A.No.453/98(F)

D.C.Kuliyapitiya 11546/RE

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

COUNSEL : Defendant-Appellant is absent and unrepresented.

Hiran de Alwis with Kalpa Virajith Attorneys-at-Law for the Plaintiff-Respondent.

ARGUED AND DECIDED ON : **27.02.2013**

K. T. CHITRASIRI, J.

Pursuant to the preparation of appeal briefs, the Registrar of this Court had sent notices to the parties on several occasions, directing them to be present in this Court for the purpose of proceeding with this appeal. Finally, the Registrar on the direction of this Court had sent notices again on 26.12.2012 to the defendant-appellant (hereinafter referred to as the defendant) and to his Registered Attorney, informing them that this matter would be taken up for argument today. Despite all those notices neither the defendant nor his Registered Attorney is present in this Court. Hence, this appeal is taken up for argument in the absence of the defendant-appellant.

Heard, learned Counsel for the plaintiff-respondent (hereinafter referred to as the plaintiff) in support of his case.

This is an appeal seeking to set aside the judgment dated 30.06.1998 of the learned District Judge of Kuliypitiya. By that judgment learned District Judge decided the case in favour of the plaintiff as prayed for in the plaint dated 16.9.1996. In that plaint, plaintiff sought *inter alia* to obtain possession of the premises referred to in the schedule to the plaint evicting the defendant therefrom, on the basis that the defendant did not attorn to the ownership of the plaintiff that he had obtained on 13.11.1993. The fact that the plaintiff became the owner of the premises in suit on 13.11.1993 by deed 8630 (para 3 of the plaint) had been recorded as an admission at the commencement of the trial.

Having been the owner of the premises in suit, plaintiff had sent a notice to the defendant requesting him to attorn to his ownership of the premises. The said letter dated 06.02.1995 sent to the defendant is marked as P5 and the registered article under which the said letter was sent had been marked as P5A. The said evidence, led through the plaintiff and his witnesses had not been controverted. Therefore, it is clear that the defendant had been informed of the ownership of the plaintiff by sending the letter marked P5. Also, there is evidence to show that the defendant had not paid rent to the plaintiff as requested in the said letter marked P5. Therefore, it is clear that the defendant had failed to attorn to the ownership of the plaintiff. Accordingly he becomes a trespasser.

Having considered the above circumstances, the learned District Judge has correctly decided the case in favour of the plaintiff on the basis that he is a trespasser to the premises in suit.

Learned District Judge has also addressed his mind to the arrears of rent due to the plaintiff by the defendant. (pages 170 and 171 of the brief). Having looked at the evidence as to the payment of rent, he had decided that the defendant was in fact in arrears of rent. As stated above, the learned District judge had concluded that the plaintiff is entitled to eject the defendant from the premises in suit having considered carefully, the failure to attorn to the plaintiff and the non-payment of rent due to the plaintiff. Accordingly, I do not see any error on the part of the trial Judge when he decided the case in favour of the plaintiff.

I have looked at the grounds of appeal mentioned in the petition of appeal as well. In that petition, the defendant has stated that the letter marked P11 sent to him by the plaintiff was not received by him as the address to which the letter was sent is wrong. The registered article which is the acknowledgement to show that the letter marked P11 had been posted, was marked as P3 in evidence without any questions being asked. (page 74 of the brief). Therefore, I am unable to agree with the contention that the letter P11 was not received by the defendant as mentioned in the petition of appeal.

However, as mentioned hereinbefore, basically it is on the strength of the letter P5 which was sent to the defendant requesting him to attorn to the ownership of the plaintiff, the action had been decided in favour of the

plaintiff. Hence, I am not inclined to interfere with the judgment of the learned District judge.

For the aforesaid reasons, I dismiss the appeal but without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL