

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

A.G. Ratnapala Samaraweera
No.46, Sir Earnest de Silva Mawatha
Colombo 07.

Plaintiff

Vs

C.A. Appeal No. 619/99(F)

D.C. Mount Lavinia Case No. 187/95/RE

The Green Inn (Pvt) Limited
No.241/1, Galle Road,
Colombo 04

Defendant

And

The Green Inn (Pvt) Limited
No.241/1, Galle Road,
Colombo 04

Defendant-Appellant

Vs.

A.G. Ratnapala Samaraweera
No.46, Sir Earnest de Silva Mawatha
Colombo 07.

Plaintiff-Respondent

Before : **A.W.A. Salam, J.**

Counsel : C. Witharana with M. Gamage for the
defendant- appellant and Gamini Marapana
P.C. with Nawin Marapana for the
plaintiff-respondent.

Argued on : 27.09.2012.

Written Submissions

Tendered on : 07.12.2012

Decided on : 11.03.2013

A W A Salam, J

This appeal raises the question as to whether the plaintiff-respondent (plaintiff) is entitled to have the defendant-appellant (defendant) ejected from the premises leased out to the latter, on the ground of areas of rent as alleged in the plaint. The plaintiff further alleged that the premises in suit are excepted premises within the meaning of Rent Act No 7 of 1972. The learned District Judge by his judgment dated 30th December 1998 held *inter alia* that the premises in suit are exempted from the Provisions of the Rent. He further held that the defendant has failed to pay the monthly rentals as agreed in terms of the indenture of lease and therefore liable to be ejected. The defendant has preferred the present appeal against the said judgment.

The main question that arises for determination in this appeal is whether the premises in suit are in fact excepted premises within the meaning of the Rent Act. According to the indenture of release bearing No 2633 produced at the trial marked as P2, the contents of which are admitted by both parties, the plaintiff has let to the defendant premises bearing assessment No 239, Galle Road, Colombo 4 and the open area bearing No 241, Galle Road Colombo 4. There was no dispute that premises No 241/1 were used as the means of access to premises No 239. In terms of paragraph 6 (h), the premises in question had been admittedly let to the defendant by the plaintiff to carry on the business of a restaurant and hotel. Based on the indenture of lease admitted by both parties the premises in question had been therefore intended to be used as business premises.

Section 21 of the Evidence Ordinance deals with proof of admissions against a person who makes them or his representative in interests. In this case the defendant has admitted by subscribing it's signature to the Lease Agreement that the premises in question are intended to be put to the use of a hotel or restaurant. The learned President's Counsel for the plaintiff has submitted that by reason of the

Provisions of Section 21 of the Evidence Ordinance the defendant cannot and is now estopped from denying the fact that a restaurant is being run in the premises in suit. The contention of the learned President's Counsel on this matter, in my opinion is not without merit.

The other allegation made against the defendant is that he had fallen into arrears of rent from March 1993 to November 1993. As has been observed by the learned District Judge, the defendant has failed to establish that he has duly paid rentals for the said period. Consequently, the learned Judge came to the conclusion that the defendant has in fact fallen into areas of rent as alleged by the plaintiff. Since the finding of the learned District Judge on the question as to whether the defendant had fallen into areas of rent is based on factual matters arising from the evidence led before him, I do not propose to analyze it critically, for it appears to me as quite consistent with the evidence led at the trial. In any event, as has been clearly proved at the trial and admitted by the defendant, the first assessment of the premises in suit was in excess of Rs.6000/- and therefore undoubtedly the leased premises are not governed by the Provisions of the Rent Act.

The next question that must be adverted to at this stage is whether the case of *Wimalaratna Vs Linganathan* 1984 1 SLR 147 has any relevance to this case. The learned President's Counsel has submitted that clause 6 (h) of the said lease P2 puts this issue beyond doubt as the premises were leased out for the specific purpose of running a restaurant or hotel. He further submitted that as at the commencement of the lease itself the parties had agreed that the premises were to be considered business premises and used as such and hence the decision in the said case of *Wimalaratna* (supra) is of no relevance.

Having considered the submissions made by both parties, I am of the opinion that the learned District Judge's findings with regard to the question of arrears of rent and whether the premises in suit are excepted premises cannot be faulted. In the circumstances the impugned judgment is affirmed and the appeal preferred by the defendant is dismissed subject to costs.

Judge of the Court of Appeal.

Kwk/-