

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

1. Jayakody Arachchige Don
Udayasiri Jayakody,
2. Jayakody Arachchige Dona
Magilina Chandrawathie
Jayakody,
Both of No. 593, Negombo Road,
Wattala.

C.A. No. 41 / 2000 F

Plaintiffs

Vs.

D.C. Negombo No. 4591 / L

Hettiarachchige Wijedasa,
No 12/59, Alwis Town,
Hendala, Wattala.

Defendant

AND NOW BETWEEN

Hettiarachchige Wijedasa,
No 12/59, Alwis Town,
Hendala, Wattala.

Defendant Appellant

Vs

1. Jayakody Arachchige Don
Udayasiri Jayakody,
2. Jayakody Arachchige Dona
Magilina Chandrawathie
Jayakody,
Both of No. 593, Negombo Road,
Wattala.

Plaintiff Respondents

BEFORE : UPALY ABEYRATHNE, J.
COUNSEL : Dr. Sunil F.A. Cooray for the Defendant
Appellant
M.H.B. Morais for the Plaintiff Respondents
ARGUED ON : 21.03.2012
DECIDED ON : 11.03.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondents (hereinafter referred to as the Respondents) instituted the said action against the Defendant Appellant (hereinafter referred to as the Appellant) in the District Court of Negombo seeking inter alia for a declaration of title to the land described in the schedule to the plaint and to eject the Appellant from the said land. The Respondents averred in their plaint that the Appellant was in possession of the premises in dispute upon a lease agreement bearing No 1436 dated 24.12.1985 for a period of 05 years and after the expiration of the said lease period the Appellant continued to be in unlawful and forceful possession of the said premises. The Appellant filed an answer praying for a dismissal of the Respondents' action. He pleaded that after the expiration of 05 years lease period he became the tenant of the Respondents. After trial the learned District Judge delivered judgement in favour of the Respondents. Being aggrieved by the said judgment dated 18.01.2000 the Appellant has preferred the present appeal to this court.

At the trial the Appellant has admitted that the Respondents were the owners of the premises in dispute and he took the said premises from the 2nd Respondent on a lease by the agreement bearing No 1436 dated 24.12.1985 and

after the expiration of the lease period on 02.09.1990 he continued to be in possession of the said premises.

It is settled law that the benefit of the Rent Act No. 07 of 1972 could be pleaded where the premises in question were occupied by him under a notarially executed lease agreement which has terminated by effluxion of time. If he opted to be a statutory tenant he should at least pay the rent. Therefore such person should prove that he has paid rent to the landlord after the expiration of the lease agreement.

It is clear from the Appellants' evidence at page 132 and 133 of the brief that the Appellant had not left the premises on the expiry of the lease period and also had not paid the authorized rent to the Respondents. Also he had not taken any effort to deposit the rent in the Local Authority. In such situation the Appellants become trespassers on the land and therefore a cause of action will accrue to the Respondents to claim the property back with damages caused to them.

In the case of K.V.K. Theivendrarajah Vs A.L.M. Sanoon 71 NLR 12 it was held that "Where, after the termination of a notarially executed lease, the tenant continues to remain in occupation of the premises by virtue of the Rent Restriction Act, the landlord is entitled to raise the rent to the full amount permitted by the statute. Accordingly, if the tenant fails to pay the authorized rent, he is liable to be ejected on the ground of arrears of rent."

In the case of M. Razik Vs H. Esufally 58 NLR 469 Basnayake C.J. observed that "As the plaintiff notified the defendant three months before the expiry of the lease that he should hand over the premises at the end of September 1951 it cannot be said that there has been a tacit renewal of the lease. The

contractual tenancy having expired at the end of September 1951, the defendant was able to remain in the premises merely because section 13 barred an action in ejectment except on one of the grounds provided therein. The defendant is then a tenant remaining in possession of the leased premises without the lessor's consent. Under the common law such a person is deemed to hold the premises on the same terms as under the lease except that he is not entitled to go on for the term of the original lease or any shorter period and is bound to pay a proportionate rent for the period of his unauthorised occupation (Van Leeuwen Censura Forensis, Pt. I, Bk IV, Ch. XXII, Sec. 15-Barber). But the Rent Restriction Act bars an action for the ejectment of such a person except in circumstances prescribed by the Act. Such a person can be ejected if he fails to pay the rent for one month after it has become due. The defendant not having paid any rent for two years cannot escape the consequences of such non-payment. The lessee's obligations under our law in regard to rent is to pay the rent at the proper place and time (Van Leeuwen's Censura Forensis, Part I, Book IV, Ch. XXII, s. 13). It is not sufficient to express a willingness to pay the rent. The rent must be actually paid.”

In the said circumstances I am of the view that the learned trial Judge has come to a right conclusion on a careful consideration of the evidence led in this case. Hence I see no reason to interfere with the said judgment of the learned District Judge dated 18.01.2000. Therefore I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal