

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

**CA Appeal No.113/98(F)**

D.C.Colombo Case No.8424/RE

Mrs. Nurul Misiriya Sareek  
No: 23,  
Dematagoda Vidyala Road,  
Colombo 10.

**Appellant**

**Vs.**

Ranathunga Arachchige Asilin Nona  
No: 163/2,  
Jayantha Weerasekara Mawatha,  
Colombo 10.

**Respondent**

**C.A.Appeal No.113/98(F)**

**D.C.Colombo Case No.8424/RE**

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

**Counsel** : Ms.Sajeevi Siriwardena for the Plaintiff-Appellant.  
Vidura Guneratne for the Defendant-Respondent.

**Argued & Decided on** : 18.03.2013

**CHITRASIRI,J.**

Learned Counsel for the plaintiff-appellant made submissions in support of this appeal. This is an appeal seeking to set aside the judgment delivered on 19.12.1987 which is undated. By that judgment learned District Judge of Colombo dismissed the plaint of the plaintiff with costs.

The Plaint dated 07.04.1985 filed by the plaintiff is for him to obtain possession of the premises referred to in the schedule to the plaint on the basis of subletting. At the commencement of the trial, it was admitted that the provisions contained in the Rent Act No.7 of 1972 is applicable to this action. Tenancy of the 1<sup>st</sup> defendant to the premises in suit also had been admitted. Issues of the plaintiff were raised to establish whether the 1<sup>st</sup> defendant had made structural changes to the premises in suit and also to establish whether a part of the premises was sublet to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant after the said structural changes were made to the premises in suit. The 1<sup>st</sup> defendant had taken up the position that the

plaintiff has not disclosed a cause of action against her. Issue No.9 had been raised on her behalf accordingly.

Even though the plaintiff had called number of witnesses to establish making of structural changes to the premises and subletting by the 1<sup>st</sup> defendant, the learned District Judge had basically relied upon the maintainability of the action probably on the basis of non-disclosure of a cause of action against the 1<sup>st</sup> defendant. Finally he has decided to dismiss the action.

This action was filed on the basis of subletting the premises in suit to the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant. However, the basis on which the notice marked 1V1 in evidence, sent to the 1<sup>st</sup> defendant requesting her to hand over the possession of the premises in suit to the plaintiff is different to the cause of action disclosed in the plaint. The reasons mentioned in the said notice are the non-payment of rent and reasonable requirement of the plaintiff. The learned District Judge acting upon the difference between the reasons mentioned in the quit notice and the basis for the filing of the action had decided to dismiss this action.

Learned Counsel for the appellant concedes that the **quit notice marked 1V1 had been sent** on the basis of arrears of rent and for reasonable requirement of the plaintiff. She further concedes that this **action had been filed** on the basis of subletting and not on the grounds referred to in the quit notice. Therefore, it is

clear that the notice sent to the 1<sup>st</sup> defendant, in order to inform the reasons for filing action is different to the basis on which this action was filed.

Therefore, it is clear that no notice had been given to the 1<sup>st</sup> defendant-respondent informing her, intended cause of action before filing this case. Indeed, it is necessary to terminate the contract of tenancy before filing action in order to evict a tenant having given the reasons therefore. In this instance, no notice terminating the contract of tenancy had been given. The notice that had been sent is on a basis different to the basis on which the action had been filed. Therefore, no cause of action could arise without terminating the contract of tenancy on the basis of subletting upon which this action had been instituted.

In the circumstances, it is my opinion that the learned District Judge is correct when he dismissed the action having answered the 1<sup>st</sup> defendant's issue No.9 in her favour.

For the aforesaid reasons, I am not inclined to interfere with the findings of the learned District Judge. Accordingly, this appeal is dismissed with costs.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL