

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

M. R. Mohomad Luthfy,
30/7, Hamza Lane,
Muthuwella Mawatha,
Colombo 15.

PLaintiff

C A 850 / 2000 (F)
D.C. Colombo No. 8769 / RE

Vs.

Izzathul Raheema,
81/3 A, Hamza Lane,
Muthuwella Mawatha,
Colombo 15.

Defendant

NOW BETWEEN

Izzathul Raheema,
81/3 A, Hamza Lane,
Muthuwella Mawatha,
Colombo 15.

Defendant Appellant

Vs.

M. R. Mohomad Luthfy,
30/7, Hamza Lane,
Muthuwella Mawatha,
Colombo 15.

Plaintiff Respondent

BEFORE : UPALY ABEYRATHNE, J.
COUNSEL : N.M. Shaheed with I.L.M. Azwar for the
Defendant Appellant
A.H.G. Ameen with Miss Waduge for the Plaintiff
Respondent
ARGUED ON : 06.02.2013
DECIDED ON : 14.05.2013

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted an action in the District Court of Galle against the Defendant Appellant (hereinafter referred to as the Appellant) seeking a judgment for a declaration of title to the land described in the schedule to the plaint and to eject the Appellant from the said land and to handover the vacant possession thereof. The Appellant filed his answer praying for a dismissal of the Respondent's action. The Appellant has taken up the position that she was the tenant of the premises in dispute. The case proceeded to trial upon 12 issues. After trial, the learned Additional District Judge has delivered a judgment in favour of the Respondent. Being aggrieved by the said judgment dated 31.07.2000 the Appellant has preferred the present appeal to this court.

The Respondent had instituted the action on the basis that the premises in suit were given to the Appellant by the father of the Respondent without any rent or payment to stay temporarily until the Appellant find a house and accordingly the Appellant came in to the said premises with leave and licence

and occupied in the house on sympathetic grounds. The Respondent has further averred that on 20.12.1996 he proceeded to terminate the said leave and licence and inform the Appellant to hand over the vacant possession of the land in suit to the Respondent.

The Appellant has taken up the position that the premises in suit were governed by the Rent Act No 07 of 1972 and she was the statutory tenant of the premises in suit. I now consider the said submissions of the Appellant. It is important to note that the Appellant has not denied the Respondent's title to the land in suit and also the receipt of the notice sent by the Respondent.

It was in evidence that the Appellant did not produce any documentary proof in order to prove the tenancy. It was also in evidence that the Appellant had made an application to the Rent Board for a certificate of tenancy and the said application also had been refused by the Rent Board. The decision of the Rent Board has been produced marked P 2. It appears from P 2 that the Rent Board has come to a conclusion that the Appellant was a licensee.

Hence in the said circumstances I am of the view that the learned Additional District Judge is correct in concluding that the Respondent is entitled to a judgment for a declaration of title. For the above reasons, I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal