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

C.A. No. 824 / 2000 F

D.C. Colombo No. 16995 / L

Wikum Nawagamuwage,
No. 431, Old Kottawa Road,
Udahamulla,
Nugegoda.

Plaintiff

Vs.

R. D. Upasena,
No 47, Kohilawatta Road,
Kuda Buthgamuwa,
Angoda.

Defendant

AND NOW BETWEEN

Wikum Nawagamuwage,
No. 431, Old Kottawa Road,
Udahamulla,
Nugegoda.

Plaintiff Appellant

Vs

R. D. Upasena,
No 47, Kohilawatta Road,
Kuda Buthgamuwa,
Angoda.

Defendant Respondent

BEFORE	:	UPALY ABEYRATHNE, J.
COUNSEL	:	S.C.B. Walgampaya PC with Upendra Walgampaya for the Plaintiff Appellant W. Dayaratne PC with Niluka Arachchi for the Defendant Respondent
ARGUED ON	:	01.04.2013
DECIDED ON	:	11.07.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondent (hereinafter referred to as the Respondent) in the District Court of Colombo seeking inter alia for a declaration of title to the premises described in the schedule to the plaint and to eject the Respondent from the said premises. The Respondent filed an answer claiming the protection of the Rent Act No 07 of 1972 and prayed for a dismissal of the Appellant's action. After trial the learned Additional District Judge delivered a judgement in favour of the Respondent. Being aggrieved by the said judgment dated on 25.10.2000 the Appellant has preferred the present appeal to this court.

At the hearing of this appeal the Respondent submitted that he commenced tenancy under Isabella Jayasekera and continued to pay rent to Isabella Jayasekera and he was unaware that the Appellant had become the owner of the premises in suit.

I now advert to the said submission. The Appellant has produced his title deeds marked P 1 and P 2. The Respondent has not challenged the said title

deeds. Accordingly the Appellant has proved that he was the owner the land in suit.

The Respondent's position was that he was unaware that the Appellant became the owner of the said premises. According to P 6 the Respondent has paid rent in the name of Isabella Jayasekera up to March 1994. It was common ground that said Isabella Jayasekera was the land lord of the Respondent for some time. It was apparent from the evidence of the Appellant that Messrs Wijesinghe & Jayasekera, Attorneys At Law, on the instruction of said Isabella Jayasekera has sent a letter dated 01.07.1994 (P 3) to the Respondent informing him that the new owner of the premises was the Appellant and requesting the Respondent to attorn to the Appellant and to pay rent to the Appellant from 01.07.1994. Since there had been no response from the Respondent to the said letter the Appellant himself had sent a letter dated 17.01.1995 (P 4) requesting the Respondent to attorn to the Appellant and to pay rent to the Appellant from 01.07.1994. But the Respondent has failed to reply to the said letter too and to accept the Appellant as the new owner and to pay rent to the Appellant.

The Respondent has contended that P 3 and P 4 have not been proved by the Appellant. The Appellant has led evidence of A. B. W. Jayasekera Attorney At Law & Notary Public, who was a partner of Messrs Wijesinghe & Jayasekera, in order to prove P 3. The witness has testified that P 3 has been sent to the Respondent and said letter was not returned undelivered by the postal authority. The registered post article of the said letters P 3 and P 4 has been produced marked P 3a and P 4a. On the other hand the Respondent, at the close of the evidence of the case for the Appellant on 29.07.1997, has not brought to the notice of Court that the letters P 3 and P 4 have not been proved by the Appellant. It is a well recognized practice in our courts that a document which has been marked subject

to proof is admissible as evidence unless such fact has not been brought to the notice of court by the opposing party at the time of closing the case of such party. In the said circumstances it can be rightly concluded that the letters P 3 and P 4 have been properly admitted as evidence.

When I consider the said circumstances it seems to me that the Respondent while admitting the rights of the Appellant has refused to attorn to the Appellant. Hence I am of the view that the Respondent's failure to attorn to the Appellant is a denial of tenancy under the Appellant. Hence the Respondent's occupation of the premises in suit has become unlawful and thereby the Respondent has become a trespasser on the land in suit. Therefore the Appellant is entitled to sue for ejectment of the Respondent.

L. B. de Silva, J. in Cassim Hadjiar Vs. Umamlevve 67 NLR 22 held that "The defendants are entitled to take up this position and refuse to acknowledge the transferee of their landlord as their own landlord, but in such an event the defendants are not entitled to claim any rights of tenancy from the plaintiff in this action, or even to claim the rights of a statutory tenant as against the plaintiff."

In the said circumstances I am of the view that the learned trial Judge has failed to consider the evidence led in this case in correct perspective. Hence I set aside the judgment of the learned Additional District Judge dated 25.10.2000 and enter a decree as prayed for in the plaint. The appeal of the Appellant is allowed with costs.

Appeal allowed.

Judge of the Court of Appeal