

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

Hassim Jumaldeen Abdul Caffoor  
Tuan Mamoor  
No.19, Peterson Lane,  
Wellawatta,  
Colombo 6.

**Plaintiff -Appellant**

**C.A. NO.632/98**  
**DC.COLOMBO**  
**CASE NO.15042/L**

**VS**

1. Mohamed Cassim alias Thassim Ahamed  
Mansoor  
(Deceased)  
1(A)Mrs.Sithy Razian Mansoor
2. Ahamed Mansoor Ahamed Hyderalli
3. Ahamed Mansoor Ahamed Farhan
4. Ahamed Azad Mansoor,

All carrying on business in Partnership under  
the name of Mansooriya and Company of  
No.124, Second Cross Street, Colombo 11

**Defendant -Respondents**

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

**COUNSEL** : Wijedasa Rajapakse P.C. with L.Livera, Yase de Silva  
and Rohitha Rajapakse for the Plaintiff-Appellant

N.Mahendra with P. Peramunugama and D. Pathirana  
for the Defendant-Respondents.

**ARGUED ON** : **03.05.2013**

**WRITTEN  
SUBMISSIONS  
FILED ON** : 2<sup>nd</sup> July 2013 by both Parties

**DECIDED ON** : **06. 08.2013**

**CHITRASIRI, J.**

This is an appeal seeking to set aside the judgment dated 29.06.1998 of the learned District Judge of Colombo. In the petition of appeal, the plaintiff-appellant (hereinafter referred to as the plaintiff) has also sought to evict the defendant-respondents (hereinafter referred to as the defendants) from the premises referred to in the schedule to the plaint. Appellant has claimed damages as well from the defendants for occupying the said premises without rent being paid.

Pursuant to a protracted trial, learned District Judge dismissed the plaint dated 29.07.1999 stating that the plaintiff has failed to prove title to the land to which the plaintiff has claimed that he is entitled to be the landlord of the defendants. Admittedly, the property in suit is the premises bearing No.124, 2<sup>nd</sup> Cross Street, Colombo 11 where the business under the name and style of MANSOORIA AND COMPANY had been carried on by the defendants.

In the impugned judgment, learned District Judge has concluded that the land in dispute had been vested with the State, consequent upon the communal disturbances occurred in the year 1983. Accordingly, she has stated that the plaintiff cannot claim title to such a land vested in a Government Institution namely REPIA. However, when this matter was taken up for argument, it was brought to the notice of Court that the said Organization, REPIA has now been wound up and the lands vested in the said

Organization had been divested and the respective owners have become entitled to those lands, by the time this action was filed. Moreover, it was brought to the notice of Court that such vesting with the State had been only a temporary measure to give relief to those who were affected by the communal disturbances.

Hence, it is seen that both parties have conceded that it is incorrect to rely on the vesting of the premises with REPIA to dismiss the action. The argument in this Court directed towards establishing the ownership of the plaintiff to the premises in suit and if so, to ascertain whether the defendants have attorn to such ownership, in order to accept the plaintiff as their landlord.

The case of the plaintiff is that he became the owner of the property in dispute pursuant to the execution of the deeds bearing Nos.1929 and 2128 marked P1 and P2 in evidence respectively. Admittedly, the original owner of the property was Ana Mana Moona Mohammadu Ibrahim. Upon his death in the year 1964, testamentary action bearing No.22465/T was filed in the District Court of Colombo to administer his estate. In that action, Ana Mana Moona Segu Mohideen, he being one of his sons amongst five children, was appointed as the Administrator of the estate of the deceased Mohammadu Ibrahim. Those facts have not been disputed by either party.

The plaintiff in his evidence has stated that five children of Ana Mana Moona Mohammadu Ibrahim sold the property to the plaintiff by the deeds marked P1 and P2. Accordingly, the plaintiff contended that he became the owner of the premises in suit consequent upon the execution of those two deeds. However, the learned Counsel for the respondents submitted that the contents of the deeds marked P1 and P2 cannot be accepted as evidence since those deeds were marked in evidence subject to those being proved in terms of the provisions contained in the Evidence Ordinance. Admittedly, neither the notary nor any witnesses to the deeds have given evidence to prove the authenticity of the deeds P1 and P2.

However, learned President's Counsel for the appellant submitted that those two deeds were marked without an objection been raised at the time the plaintiff closed his case. Accordingly, he contended that it is not necessary for the plaintiff to call the notary or witnesses to the deeds to prove the authenticity of those two deeds. He therefore submitted that the contents of those two deeds should be considered as evidence of the case. He relied upon the cases of **Balapitiye Gunananda Thero vs. Talalle Methananda Thero (1997) 2 SLR at 101** and **Sri Lanka Ports Authority and another vs. Jugolinija-Boal East (1981) 1 SLR at 18** in support of this contention.

In the latter decision, it was held that:

*“If no objection is taken, when at the close of a case documents are read in evidence, they are evidence for all purposes of the law. This is the cursus curiae of the original civil court”.*

Learned Counsel for the respondents did not challenge the law referred to in the above two decisions. However, he submitted that at the time of the closure of the case of the plaintiff, an application was made on behalf of the defendants to accept those documents subject to proof. I have carefully perused the proceedings recorded at the time the plaintiff's case was closed. In those proceedings, it had been recorded that the plaintiff closed his case reading in evidence the documents marked P1 to P21. Nothing is found therein to support the fact that the deeds P1 and P2 were marked subject to proof. In that, it is further recorded that only the documents P14, 18A, 19A, 19B and 20C were marked subject to proof. As referred to above, the proceedings recorded at the closure of the plaintiff's case would assist to identify the documents of the plaintiff that were marked subject to proof. Though I have looked at the proceedings referred to above carefully, I am unable to find anything to establish a specific request been made to have the two deeds P1 and P2 accepted in evidence with the condition of being proved as required in terms of the Evidence Ordinance. At the same time it is seen that the documents marked subject to proof had specifically been recorded at the time the plaintiff closed his case.

In the circumstances, relying upon the aforesaid two decisions namely, **Balapitiye Gunananda Thero vs. Talalle Methananda Thero (supra)** and **Sri Lanka Ports Authority and another vs. Jugolinija-Boal East (supra)**, it is my view that the plaintiff has established his title to the premises in suit by producing the deeds marked P1 and P2 even though the notary or the witnesses to the deeds have not given evidence in order to substantiate the execution of those two deeds.

More importantly, it is to be noted that the 2<sup>nd</sup> defendant himself in his evidence has admitted that he was made to understand of the fact that the plaintiff became the owner of the premises in suit. His evidence to this effect reads thus:

“ ඒ අනුව ආනා මානා මුනාට හිඟ ගෙවල් කුලී ගෙව්වා. ඉන් අනතුරුව මම දැනගත්තා මෙම නඩුවේ පැමිණිලිකරු එම අදාල ස්ථානය මිලයට ගත්ත බව. පැමිණිලිකරු අයිතිකරුවන් බව දැනගත්තේ පැමිණිලිකරුගේ නීතිඥවරයා මට ලිපියක් එව්වා. එමනිසා එම අදාල ස්ථානය සම්බන්ධයෙන් කිසිම ගැටලුවක් තිබුණේ නැහැ. අයිතිය පිළිබඳව මගේ නීතිඥ මහත්වරුන්ගේ උපදෙස් පිට පිළිතුරු යැව්වා. කුමක් වුවත් 88 පමණ පැමිණිලිකරු අයිතිකරු බව දැනගෙන හිටියා. ....

ප්‍ර : පැ.13 දිනය වන 84/05/21 දින වන විට මෙම අදාල ස්ථානයේ අයිතිකරු පැමිණිලිකරු බව දැන ගත්ත ?

උ : මම ඔවුන් මෙම අදාල ස්ථානයේ මිලදීගත් බව දැන ගත්ත. ”

(vide pages 183 – 184 in the appeal brief)

The aforesaid material amply demonstrates that the plaintiff became the owner of the property in dispute pursuant to the two deeds marked P1 and P2 been executed. Learned District Judge has not addressed her mind to the matters referred to above. In the circumstances, I decide that the learned District Judge misdirected herself when she dismissed the plaint on the basis that the plaintiff has failed to establish his title to the premises in suit.

Next issue is to ascertain whether the plaintiff becoming the owner of the premises has properly been communicated to the defendants for them to attorn to the plaintiff. The letters marked P5 to P8 (at pages 311 – 317 in the appeal brief) had been sent to the four defendants by the Attorney-at-Law of the plaintiff requesting the defendants to pay rent to the plaintiff in respect of this premises. The letter dated 3.11.1981 marked P11 (vide page in the appeal brief) shows that those four letters had been received by the four defendants. This letter P11 had been written by the Attorney-at-Law on behalf of the four defendants. Those letters have been marked without any objection being raised by the defendants. Therefore, it is clear that the plaintiff has written to the defendants requesting them to attorn to him after the plaintiff became the owner of the premises.

Moreover, the plaintiff through his Attorney-at-Law has sent the letter dated 27.04.1984 marked P12 (vide page 328 of the appeal brief) to all the defendants requesting them to treat the plaintiff as their landlord. A reply (vide

page 329 of the appeal brief) to the said letter had been sent by the Attorney-at-law M.M.A.Raheem of the defendants to the Attorney-at-Law of the plaintiff and it was marked as P13. By that reply marked P13, plaintiff was informed that the change of ownership referred to in the letter P12 had not been informed to the defendants by their previous landlords who were the children of the original owner Ana Mana Moona Mohammadu Ibrahim Saibu.

Accordingly, the letter dated 24.09.1984 marked P14 (vide page 330 in the appeal brief) had been sent to the defendants by the Administrator of the Estate of the original landlord of the defendants informing them that the heirs of the said deceased Ana Mana Moona Mohammadu Ibrahim had sold this property to the plaintiff. In that letter, a request had also been made from the defendants to pay rent to the plaintiff. This evidence would definitely be a strong item of evidence to support the plaintiff becoming the owner of the premises in suit having purchased the same from the landlord of the defendants. However, the defendants have denied receiving such a letter even though the said letter P14 was marked in evidence without objection been raised. Such a stand has been taken by the defendants for the reason that they have objected to the marking of its registered article P14A. Accordingly, the defendants denied having received the letter P14 informing them of the new ownership claimed by the plaintiff sent by the former owners whom they continue to accept as their landlords.

However, the letter dated 05<sup>th</sup> October 1984 (P15) (vide page 332 in the appeal brief) sent by the Attorney-at-law of the defendants indicates that the defendants have received the letter marked P14. In that letter P15, a reference is made to the letter P14 written by the former owners whom the defendants have accepted as their landlord. In that letter dated 05.10.1984 (P15), Attorney-at-Law of the defendants at the very outset has acknowledged the receipt of the letter dated 24.09.1984 marked P14. Such an acknowledgment of the letter P14 would estop the defendants denying the receipt of the letter marked P14 in which the request to attorn to the plaintiff by the former owners had been made.

Such circumstances would establish that the persons whom the defendants had accepted as their landlord has parted with their ownership to the premises in suit and also the plaintiff becoming the owner of the premises in suit consequent upon the execution of the deeds marked P1 and P2. Also, those materials have made it clear that the plaintiff has successfully established that there had been requests made to the defendants, both by the former and the present owners of the premises in suit, in order to attorn to the plaintiff accepting him as their landlord.

At this stage, it must also be noted that the defendants themselves had filed the action bearing No.3797/ZL in the District Court of Colombo making the plaintiff as the defendant in that case, seeking for a declaration declaring

them as the tenant to the premises in suit. The plaint filed in that case marked P4 is found at page 286 of the appeal brief. Such an action of the defendants also supports that they, at one stage had acted accepting the plaintiff as their landlord to the premises in suit.

The next issue then is to ascertain whether the plaintiff is entitled to have the defendants evicted from the premises in dispute on the basis that the defendants have failed to attorn to the plaintiff's title and to accept him as their landlord. In this regard, I wish to refer to the case of **Seelawathie vs. Ediriweera (1989) 2 SLR at 170**. In that it was held thus:

*“ There is thus a long and authoritative series of decisions to the effect that continuance in occupation by the tenant, (with notice of the transferee's election to recognize the tenant) constitutes and exercise of the tenant's option to acknowledge the purchaser as landlord establishing, the privity of contract between the parties. No other act or conduct is necessary.”*

Also, in the case of **Gunasekera vs. Jinadasa (1996) 2 SLR at 115**, it was held as follows:

*“While it is legitimate initially infer attornment from continued occupation, thus establishing privity of contract between the parties, another principle of law of contract comes into play in such circumstances to which the presumption of attornment must sometimes yield. When the occupier persists in conduct which is fundamentally inconsistent with the contract*

*of tenancy, and amounts to a repudiation of that presumed contract the transferee has the option **either** to treat the tenancy as subsisting and to sue for arrears of rent and for ejectment **or** to accept the occupiers repudiation of the tenancy to proceed against him as a trespasser.”*

As described before in this judgment, the circumstances of the case at hand indicate that the conduct of the defendants as to the rights of the plaintiff to the premises in suit had been inconsistent at every material point. Therefore, as held in the authorities above, such inconsistent conduct of the defendants would lead to consider the contract of tenancy repudiated by them. In the event the defendants by conduct repudiate the contract of tenancy then the transferee or the new owner to the property has the option either to treat the tenancy as subsisting and then he/she has the option either to sue for arrears of rent and ejectment or to accept the occupiers repudiation of the tenancy and to proceed accordingly, considering him as a trespasser.

In this instance, it is clear that the defendants have repudiated the contract of tenancy by not taking steps to attorn to the new owner (plaintiff) to the premises subjected to, in this case. Therefore, he has the right to treat the tenants as trespassers and to obtain an order to evict the tenants from the premises in suit. In the circumstances, it is my opinion that the plaintiff in this case is entitled to have the defendants evicted from the premises referred to in the schedule to the plaint filed in this case.

At this stage it must also be noted that no evidence is found as to the claim for damages referred to in the plaint. Therefore, the plaintiff is not entitled to have the reliefs other than the eviction of the defendants and the costs of the action though there are other reliefs prayed for in his plaint. Accordingly, the plaintiff is entitled to the reliefs (A) and (C) referred to in the plaint dated 29.07.1990. Learned District Judge is directed to enter decree accordingly.

For the aforesaid reasons, this appeal is allowed. Having looked at the circumstances of the case, I make no order as to the costs of this appeal.

*Appeal allowed.*

JUDGE OF THE COURT OF APPEAL