

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

U.G.Wimalawathie  
No.488/1, Thimbirigasyaya Road,  
Colombo 05.

**Defendant-Appellant**

C.A. Appeal No.293/98(F)

Vs.

D.C.Colombo No.6333/RE

A.V.Gunawardane

475/10, Thimbirigasyaya Road,

Colombo 05.

**Plaintiff-Respondent**

Before : K.T.Chitrasiri, J

Counsel : Wijedasa Rajapakse PC with Dasun Nagashena and Rajitha Rajapakse for  
the Defendant-Appellant

B.O.P.Jayawardena for the Plaintiff-Respondent

Argued &

Decided on : 30.08.2013

**K.T.Chitrasiri,J**

Heard both Counsel in support of their respective cases.

This is an appeal seeking to set aside the judgment dated 30.04.1998 of the learned Additional District Judge of Colombo. The original plaintiff (hereinafter referred to as the plaintiff) filed this action *inter alia* to have the defendant evicted from the premises referred to

in the schedule to the plaint. In the amended plaint dated 09.05.1994, the plaintiff has shown two causes of action against the defendant-appellant (hereinafter referred to as the defendant) and it is the basis upon which this action has been instituted. The issues of the plaintiff also had been suggested on the basis of those two causes of action. Those issues are directed to have the defendant ejected from the premises in suit on the basis of:

- arrears of rent; and
- for causing damages which would amount to deteriorate the premises in suit.

Learned District Judge dismissed the case filed, relying on the cause of action alleged to have arisen on the basis of arrears of rent. No appeal has been preferred to challenge the said dismissal of the action filed on the basis of arrears of rent. However, the learned District Judge has decided the case filed on the basis of deterioration caused by the defendant to the premises in question, in favour of the plaintiff. Accordingly, the defendant is to be evicted from the premises in suit. Being aggrieved by the said decision of the learned trial judge, the defendant filed this appeal to have it set aside.

The cause of action alleged to have arisen to the plaintiff on the basis of deterioration caused to the premises has been raised in the issues bearing Nos.3, 4 and 5. In those issues, it is clearly mentioned that the second cause of action alleged to have arisen to the plaintiff is on the basis of deterioration of the premises due to the acts of the defendant. It is more fully described in paragraph 5 of the amended plaint as well. In that paragraph 5, the manner in which the defendant alleged to have caused damages to the premises is described in detail. Learned District Judge has clearly identified the provision in law namely Section 22(1) (d) of the

Rent Act No.7 of 1972 that is applicable in this instance and he at the outset has also referred to this Section in his judgment. Applicability of the provisions contained in the Rent Act to this action has not been disputed. Hence, there is no dispute as to the applicability of the Section 22(1) (d) of the Rent Act No.7 of 1972 in this instance since the cause of action pleaded by the plaintiff is directly on that provision of law.

Section 22(1) (d) of the Rent Act No.7 of 1972 reads thus:

*“the tenant or any person residing or lodging with him or being his subtenant has, in the opinion of the Court, been guilty of conduct which is a nuisance to adjoining occupiers or has been convicted of using the premises for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the court, deteriorated owing to acts committed by or to neglect or default of the tenant or any such person;”*

*(emphasis added)*

The aforesaid Section allows to have a defendant ejected, if the court in its opinion decides that the condition of the premises has deteriorated owing to the acts committed by ..... the defendant-tenant or any such person.

Therefore, it is the burden of a plaintiff who seeks to have a tenant evicted from tenanted premises on the basis of deterioration caused to the premises, to establish that the premise in suit has become deteriorated owing to the acts of the defendant. Learned

President's Counsel for the appellants submits that there is not an iota of evidence is found to establish that there had been deterioration of the premises due to the acts of the defendant in this case. Learned Counsel for the plaintiff-respondent submits that there is evidence to show that the defendant has effected numerous changes to the premises that includes structural changes as well. His contention is that those changes alone would amount to deterioration of the premises.

A tenant can be ejected on the basis of Section 22(1) (d) of the Rent Act No.7 of 1972, only upon establishing the premises in suit becoming deteriorated owing to the acts of the defendant. **Therefore, establishing deterioration of the premises is a *sine qua non* in such a situation.** Deterioration means the condition becoming worse or decay than what it was.

In order to prove this requirement the plaintiff has called an engineer by the name of Ranjith Tissa Madanayake. In his evidence, he has stated the way in which the changes to the premises had been effected. [vide proceedings at pages 113 and 114 of the appeal brief] As pointed out by the learned President's Counsel, he has not said anything as to the premises becoming deteriorated owing to the effected changes that he has spoken of. Not even a question been posed to him making a suggestion to that effect.

Even the plaintiff has not come out with the aspect of deterioration though she was elaborating on the changes effected to the premises by the defendant. [vide proceedings in pages 141 and 142 of the appeal brief] In short, the plaintiff has failed to present any material to show that the premises became deteriorated due to the acts of the defendant. On the other hand, the defendant in her evidence has stated that the changes referred to by the witnesses of

the plaintiff have been effected only after having obtained permission from the Rent Control Board made in the application bearing No.18952 marked V5. [Vide proceedings to the page 154] Obtaining permission from the Rent Control Board to effect changes to the premises in suit has not been disputed even by the plaintiff.

Contention of the learned Counsel for the plaintiff-respondent is that the changes effected to the premises in suit would amount to deterioration of the premises. As I have mentioned hereinbefore, deterioration means the condition becoming worse or decay. In this connection, I also wish to refer to the case of ***Musthapa Thamby lebee vs Ruwanpathirana***. [1988 (1) SLR page 186] In that decision, Thabiah J, agreeing with Ranasinghe C J and Seneviratne J held thus:

*“To obtain ejectment on the ground of deterioration of the premises as contemplated in S.22 (1)(d) of the Rent Act **the acts complained of must cause some damage to the premises let and thereby worsen its condition.** Demolition of the bucket latrine and construction of a water-sealed latrine cannot be said to cause a deterioration of the condition of the premises let. What the tenant did was to effect a useful improvement which would serve a useful purpose and this rendered the property more valuable.”*

[emphasis added]

In the said decision, 4<sup>th</sup> edition of the book titled “Landlord and Tenant in South Africa” by Wille, had also been quoted and I reproduce the same for convenience.

*“A necessary improvement is one which is necessary for the protection or preservation of the leased property. The other forms of improvements are divided by authorities into useful improvements, namely, those which improve the property or add to its value and luxurious improvements such as statutory” [page 265]*

Indeed, the changes that had been effected by the defendant to the premises in suit in this instance may probably have added more value to the property. In the circumstances, it is my view that the plaintiff has failed to establish that the condition of the premises in suit was made to deteriorate owing to the acts of the defendant. Learned District Judge has not address his mind to the matters referred to above on those lines when he decided the issue No.3 affirmatively. His conclusions are on the basis that the changes effected in whatever the form would amount to deterioration of the premises. It is where the learned District Judge has misdirected himself.

For the aforesaid reasons, I allow the appeal with costs. The judgment of the learned District Judge dated 30.4.1998 is set aside. Accordingly, I make order dismissing the plaint of the plaintiff. Learned District Judge is directed to enter decree accordingly.

*Appeal allowed.*

JUDGE OF THE COURT OF APPEAL

KLP/-