

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

C.A. Appeal No.1025/98(F)

DC Kandy 11912/X

Multi Purpose Co-operative Society of Kundasale
Manikhinna.

Appellant

Vs.

M.B. Marasinghe
No: 01,
Narampanawa Road,
Manikhinna.

Respondent

CA 1024/98 (F)

DC KANDY 11913/X

CA 1025/98 (F)

DC KANDY 11912/X

BEFORE: K.T. CHITRASIRI, J.

COUNSEL: Ranjith Patabendige instd. By H.M. Herath for the Defendant-Appellants in both cases

S.C.B. Walgampaya P.C. with Upendra Walgampaya for the Plaintiff-Respondents in both cases

ARGUED &

DECIDED ON: 24.10.2013

K.T. CHITRASIRI, J.

Two appeals bearing Nos. CA 1024/98 & CA 1025/98 have been filed challenging the Judgment dated 20.08.1998 of the learned District Judge of Kandy. The aforesaid Judgment has been entered in the case bearing No. 11912/X to which the appeal bearing No. CA 1025/98 had been filed. Appeal filed in respect of the case 11913/X also is to challenge the said judgment dated 20.08.1998 since there is an order to bind the parties in the action 11913/X, by the said judgment in 11912/X.

Learned Counsel appearing for both the appellants in the two appeals submits that the possession of both the premises in suit in the two cases have now been in the hands of the two plaintiff-respondents. Mr. Walgampaya PC at this stage submits that the possession of both the premises was obtained by the two respondents consequent upon executing the decree pursuant to an application for writ pending appeal been filed in the District Court.

Learned Counsel for the appellant does not make any submissions orally to support the appeal. He only referred to the ground of appeal mentioed in paragraph 8(ඇ) in the petition of appeal. The aforesaid ground of appeal is in respect of the applicability of the Rent Act No. 7 of 1972 to the area where the two premises in suit are situated. Contention of the learned Counsel for the defendant-appellants seems to be that the plaintiff-respondents have failed to establish that the area where the premises in suit are situated is governed by the Rent Act. Learned District Judge has addressed his mind to this aspect having considered the evidence of the witness Hemachandra Rajapakshe who is the Secretary of the Kundasale Pradeshiya Sabha. His evidence clearly shows that the rent in respect of these two premises had been accepted by Pradeshiya Sabha and he was not aware of any Rent Board being established in respect of this area. Learned District Judge, in this connection has stated thus:

මේ අනුව පෙනී යන්නේ කුණ්ඩසාලේ ප්‍රාදේශීය සභා බල ප්‍රදේශයේ කුලී පනත බලපැවැත්වෙන බවට සාක්ෂිකරු පොදු ප්‍රකාශයක් කලත්, යම් දේපලක්

සම්බන්ධයෙන් කුලී පනත බලපාන්නේද නැද්ද යන්න තීරණය කරන්නේ කවර කරුණු මත ද යන්න වත් මෙම ගොඩනැගිල්ල සම්බන්ධයෙන් එම කරුණු අදාළ වන්නේද නැද්ද යන්න සම්බන්ධයෙන් වත් කිසිදු දැනුමක් මෙම සාක්ෂිකරු වෙත නොමැති බවයි. අඩුම වශයෙන් විත්තියෙන් විෂය වස්තුව කෙරෙහි කුලී පනත අදාළ වෙන බව දැන්වීමට පනත යටතේ නිකුත් කර ඇති ගැසට් නිවේදනයක් හෝ ඉදිරිපත් කිරීමට අසමත් වී ඇත.

Upon considering the above reasons of the learned District Judge, it is clear that he has carefully considered the issue referred to in paragraph 8(ඇ) in the petition of appeal and has come to the correct decision. Therefore, I am not inclined to interfere with his findings on this issue.

In the petition of appeal, it is also stated that the plaintiff has not properly terminated the contract of tenancy. This issue also had been considered carefully by the learned District Judge. (vide page 58 of the Judgment) He, in his Judgment has referred to the document P1. In that document it is mentioned that this letter P1 should be inter alia treated as the notice of termination as well. The said letter is found at page 63 in the appeal brief. Learned District Judge has considered the relevant sentences in the said letter marked P1 and has come to the conclusion that it is the letter of termination of the contract of tenancy. I do not see any wrong in concluding so since the contents of the letter is clear enough to consider it as the notice of termination of the tenancy of the two plaintiffs. Therefore, it is clear that the two plaintiffs have properly sent out notices of termination in respect of the two premises in

question. Hence the appeal ground referred to in paragraph 8(9) also fails.

For the aforesaid reasons the two appeals filed bearing Nos. CA 1024/98 & CA 1025/98 are dismissed with costs.

Appeals in both cases are dismissed.

JUDGE OF THE COURT OF APPEAL

Mm/-.