

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

1. Mohamed Subair Mohamed Navaz,
No. 76/6, Matale Road,
Akurana.
2. Subair Lebbe Mohamed Naufer
alis Subair Mohamed Naufer,
No. 382 A, 9th Mile Post,
Alawathugoda.

Plaintiffs

C A 741 / 92 (F)
D.C. Kandy No. 15402 / L

Vs.

Victor Kalansooriya,
No. 89, Colombo Street and
Presently at Sir Bennet De Soysa
Mawatha, Kandy.

Defendant

NOW BETWEEN

1. Mohamed Subair Mohamed Navaz,
No. 76/6, Matale Road,
Akurana.
2. Subair Lebbe Mohamed Naufer
alis Subair Mohamed Naufer,
(deceased)
- 2a. Mohamed Naufer Mohamed Fayas,
No. 17 B, Charlement Road,
Wellawatta, Colombo 6.

Plaintiff Appellants

Vs.

Victor Kalansooriya,
No. 89, Colombo Street and
Presently at Sir Bennet De Soysa
Mawatha, Kandy.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.
COUNSEL : H. Vithanachchi for the Plaintiff Appellants
M. R. De Silva PC with Hirosha Munasinghe for
the Defendant Respondent
ARGUED ON : 01.11.2013
DECIDED ON : 23.01.2014

UPALY ABEYRATHNE, J.

The Plaintiff Appellants (hereinafter referred to as the Appellants) instituted an action in the District Court of Kandy against the Defendant Respondent (hereinafter referred to as the Respondent) seeking 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 praying for a dismissal of the Appellant's action. The Respondent has taken up the position that he was the statutory tenant of the premises in dispute. The case proceeded to trial upon 05 issues. After trial, the learned District Judge has dismissed the Appellants' action. Being aggrieved by the said judgment dated 16.03.1992 the Appellants have preferred the present appeal to this court.

The Appellants had instituted the action on the basis that upon a letter dated 29.12.1986, the Respondent was in possession of the premises in suit with leave and licence of Kandasamy Pillai Manikkam who was one of the predecessors in title of the Appellants, and said leave and license was terminated by said Manikkam by a letter dated 19.01.1987.

The Respondent has admitted the title of the Appellants. It was common ground that the Appellants became the owners of the premises in suit by a deed of transfer bearing No 576 dated 19.12.1986. Since the title of the Appellants had been admitted by the Respondent the burden was on the Respondent to prove that he was in occupation of the premises in suit as the tenant of the Appellant.

The Respondent in his evidence has stated that he had been in occupation of the premises in suit as Manikkam's tenant at Rs. 75/- per month since 1973. In proof of the said facts the Respondent has produce several documents marked V 1 to V 13. V 13 was a letter dated 18.02.1987 which had been sent to the Commissioner, Municipal Council, Kandy by A. L. M. Anees, Attorney At Law, upon the instruction of K. Manikkam, the predecessor in title of the Appellant. In the said letter the Respondent had been identified as the tenant of K. Manikkam with regard to premises No 89 and 91. According to V 2 the Respondent had paid a sum of Rs. 15/- as license fees to the Municipal Council, Kandy for the year 1979 in order to carry on a tailor's shop at premises No 89 and 91. V 2, V 3, V 4, V 6, V 7, V 8, V 9 and V 10 were the receipts of payment of license fees for the years 1980 to 1989. V 1 was a copy of the Rent Ledger maintained by the Municipal Council, Kandy which indicates the rent paid by the Respondent from May, 1985, in respect of the premises No 89 and also from January, 1986, in respect of the premises No 91.

The Appellants have not adduced adequate evidence to establish the position that the Respondent was in occupation of the premises in suit with leave and license of said Manikkam.

In the said circumstances the Appellants were entitled only to a judgment for a declaration of title. Since the premises are governed by the Rent Act the Respondent cannot be ejected from these premises until his tenancy is duly terminated under the provisions of the Rent Act. For the above reasons, I dismiss the appeal of the Appellants with costs.

Appeal dismissed.

Judge of the Court of Appeal