

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

Miyuri Irine Fernando,  
Kanduketiya, Athgamuwa,  
Padukka.

C.A. No 863A/ 98 F

Plaintiff

D.C. Colombo No. 16798/L

**Vs.**

M. T. M. Jiccry,  
No. 31/2, School Lane,  
Dematagoda, Colombo 9.

Defendant

**And Now Between**

M. T. M. Jiccry,  
No. 31/2, School Lane,  
Dematagoda, Colombo 9.

Defendant Appellant

**Vs**

Miyuri Irine Fernando,  
Kanduketiya, Athgamuwa,  
Padukka.

Plaintiff -Respondent

BEFORE : UPALY ABEYRATHNE, J.  
COUNSEL : M.C.M. Muneer for the Defendant Appellant.  
Sandamal Rajapaksa for the Plaintiff  
Respondent  
ARGUED ON : 12.11.2013  
DECIDED ON : 11.02.2014

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the Defendant Appellant (hereinafter referred to as the Appellant) seeking inter alia a declaration of title to the premises described in the schedule to the plaint and to eject the Appellant from the said premises. The Respondent has stated that he had entered in to an agreement with the Appellant to sell the said premises to the Appellant for a sum of Rs 200,000/-. Thereafter the Appellant had paid a sum of Rs 25000/- and agreed to pay the balance sum of Rs 175,000/- before 30<sup>th</sup> July 1987 in order to complete the purchase and accordingly the Appellant was placed in possession of the premises with leave and license of the Respondent. The Respondent has further stated that the Appellant failed to complete the purchase by paying the balance sum of Rs 175,000/- before the said date and therefore, by a letter dated 28.06.1994, he terminated the said leave and license given to the Appellant and despite the said letter the Appellant continued to be in occupation of the said premises.

The Respondent has filed an answer denying the averment contained in the plaint and praying for a dismissal of the Respondent's action. But the Appellant has admitted the said agreement with the Respondent. His position was that he had paid a sum of Rs 126,000/- and the Respondent was delaying to receive the balance sum and to complete the purchase.

After trial the learned Additional District Judge has delivered a judgment in favour of the Respondent subject to the Appellant's right of '*jus retentionis*' until a payment of Rs 550,000/- made to the Appellant by the Respondent. Being aggrieved by the said judgment dated 16.10.1998 the Appellant has preferred the instant appeal to this court.

In his evidence the Appellant has admitted the receipt of V 4 which had been sent by the Respondent informing the Appellant to pay the balance amount on or before 30<sup>th</sup> April, 1988. The Appellant has failed to pay as requested by V 4. In the said circumstances it seems that the Appellant has failed to fulfil the terms of the agreement.

Therefore I see no reason to interfere with the judgment of the learned Additional District Judge dated 16.10.1998. Hence I dismiss the appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal

**CA863B/98(F)**

**DC(Colombo)16798/L**

**Before** : **Upaly Abeyrathne,J**

**Counsel** : Sandamal Rajapakshe for the  
Plaintiff-Respondent.  
M.C.M. Muneer for the Defendant-Appellant.

**Argued &**

**Decided on** : **12.11.2013**

**Upaly Abeyrathne, J**

The Learned Counsel for the appellant in appeal no 863B/98 makes an application to withdraw the appeal. Learned Counsel for the respondent in appeal no.863B/98 has no objection to this application. Accordingly the application for withdrawal of the appeal is allowed. Appeal no.863B/98 is dismissed without costs.

***Appeal dismissed.***

**Judge of the Court of Appeal**

Na/-