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

S. R. Sulthan
No.80, Light House Street,
Fort, Galle

Plaintiff

Vs

Charlis Kalansuriya
No.143, Olcott Mawatha,
(Hiribuara Road), Galle

Defendant (Deceased)

C.A.NO.978/98 (F)
D.C.GALLE CASE NO.236/RE

And now between

1B. Upali Seneviratna Kalansuriya
Meepawala, Poddala

And others

Substituted- Defendant-Appellants

Vs

S. R. Sulthan
No.80, Light House Street,
Fort, Galle

Plaintiff-Respondent

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

COUNSEL : Palitha Kumarasinghe, P.C. With Asanka Ranwala for the Substituted-Defendant-Appellants

Rohan Shabandu, P.C.with Dulani Warawewa for the Plaintiff- Respondent

ARGUED ON : 20.05.2014

DECIDED ON : 26.06.2014

CHITRASIRI, J.

Substituted-Defendant-Appellants preferred this appeal seeking to set aside the judgment dated 11.9.1998 of the learned District Judge of Galle and to have a judgment dismissing the plaint filed by the plaintiff-respondent. Plaintiff-Respondent filed this action in the District Court of Galle seeking *inter alia* to have the original defendant namely, Charlis Kalansuriya and the persons holding under him, evicted from the premises morefully described in the schedule to the plaint and for damages. The plaint had been filed on the basis that the defendant did sublet the premises referred to in the schedule "B" to the plaint, to one W.H.Sumathipala and then she sought relief in terms of the Rent Act No.07 of 1972 for sub-letting.

At the commencement of the trial, an admission had been recorded stating that the defendant became a lessee of the premises referred to in the schedule "A" to the plaint. Premises in the schedule "B" falls within the premises referred to in the schedule "A" therein. Hence, the premises in schedule "B" is a section or a part of the premises described in Schedule "A" to the plaint. Plaintiff-respondent has alleged that the original defendant sublet the premises in schedule "B" and therefore she is entitled to evict the defendant and to recover possession of the entire premises referred to in the schedule "A" to the plaint. The aforesaid admission had been recorded subject to the matters contained in the answer of the defendant.

(vide at page 90 in the appeal brief)

In the amended answer of the substituted defendants, they have taken up the position that the deceased original defendant became a lessee only to the front section of the premises bearing assessment No.143. In that answer, it is also averred that the rear section of the house was in a dilapidated condition and it was assigned with a different assessment number to which one Sumathipala came into occupation with the permission of Bakeer Hassan. (vide paragraphs 16, 20 and 23 in the answer which is found at pages 66 and 67 in the appeal brief) Bakeer Hassan is the brother of the respondent. As such, the admission recorded to state that the original defendant became the lessee of the premises referred to in the schedule "A" to the plaint has to be interpreted subject to the aforesaid matters mentioned in the amended answer. Under those circumstances, it is incorrect to come to a decision that the original defendant namely Charlis Kalansooriya became the lessee of the entire premises described in the schedule "A" to the plaint.

Learned District Judge seems to have acted on the basis that the defendant became the tenant of the entire house including that of the premises referred to in the schedule "B" to the plaint. In coming to such a decision, he has relied upon the aforesaid admission recorded at the commencement of the trial. [*Vide proceedings at page 307 in the appeal brief*]. As mentioned hereinbefore, the manner in which the admission was recorded does not give such a meaning and therefore, it is seen that the learned District Judge has come to his findings on an erroneous footing. Hence, it must be noted that the fact that the original defendant took over the control of the entire premises or whether he became a

lessee only to the front section of the house should have been determined by the trial judge only after evaluating the evidence of both parties.

As mentioned before, the substituted defendants in their answer has stated that the premises referred to in the schedule "B" had been given on rent to one W.H.Sumathipala in the month of November 1970, by the brother of the plaintiff namely, K. Bakeer Hassan. It is the evidence of the 1F substituted defendant as well. His evidence in this connection is as follows:

"ප්‍ර: දැන් තමන් දන්නව ඔය දොරවල් තුනෙන් වසා ඇති බිත්තියට එහායින් මේ ගොඩනැගිල්ලේ තවත් කොටසක් තිබුණ බව ?

උ: එහෙමයි.

ප්‍ර: ඒ කොටසට තමන් ගිහිල්ල තියෙනවද ?

උ: ගිහිල්ල තියෙනව.

ප්‍ර: ඒ කොටස මොන වගේ කොටසක්ද?

උ: කාමර දෙකක්, කුස්සියක්, මැද මිදුලක්, වැසිකිලියක් ආදිය තිබුණ.

ප්‍ර: තමන්ට දැනීමේ හැටියට මෙම ස්ථානයේ කවුරුවත් පදිංචි වෙලා සිටියද?

උ: ඒ වෙලාවෙ මම යන වෙලාවෙ සුමතිපාල සිටිය.

ප්‍ර: එයාගේ සම්පූර්ණ නම දන්නවද ?

උ: ඩබ්ලිව්. එච්. සුමතිපාල

ප්‍ර: ඩබ්ලිව්. එච්. සුමතිපාල එම ස්ථානයේ පදිංචියට ආවෙ තමන්ගේ දැනීමේ හැටියට කොයි කාලෙද?

උ: 1970 දී පමණ.

ප්‍ර: කොහොමද තමන් දන්නේ 1970 සුමතිපාල කියන තැනැත්තා එම ස්ථානයට පදිංචි වෙන්න ආව කියල ?

උ: 1971 ජේ.වී.පී කලබල තිබුණ. ඊට ප්‍රථමයෙන් ඔය ස්ථානයේ සුමතිපාල සිරිය කියල හොඳට මතකයි.

ප්‍ර: සුමතිපාල කියන තැනැත්තා තමන්ගේ දැනුමේ හැරියට මොනවා කරපු කෙනෙක්ද?

උ: වරායේ ලිපිකරුවෙක්.

ප්‍ර: ඔය ස්ථානයේ සුමතිපාල පදිංචි වෙලා සිරියේ කවුරුත් එක්කද ?

උ: අම්මයි, නෝනයි, නෝනගේ නංගි කෙනෙකුයි.

ප්‍ර: සුමතිපාල ඔය ස්ථානයට එන්න යෙදුනේ කොහොමද ?

උ: පිරිපස්සෙන් තුන්වතාවක් කඩේ කැඩුව. ගෙවල් අයිතිකාර මහත්තයට කිව්ව පිරිපස්සෙ දොර කඩනව කියල. හසන් මහත්තයට තාත්ත කිව්ව. මේ පැත්තෙන් දොර කඩනව කියලා. ඒ මහත්තය සුමතිපාල මහත්තය එතෙන්ට ගෙනාව.

ප්‍ර: හසන් මහත්තය සුමතිපාල මහත්තය පිරිපස්සෙ කොටසට ගෙනාවෙ මොන පදනමක් මතද?

උ: මම දන්නේ නැහැ."

(vide proceedings at pages 170 and 171 in the appeal brief)

She in her evidence has also explained the manner in which the rear section of the house was assigned the assessment No.143/1 and how, both the numbers 143 and 143/1 was amalgamated, it to become the No.143 at a subsequent stage. Her evidence in this regard reads thus:

"ප්‍ර: 5බී, 5සී අනුවත් ඒ ආකාරයෙන් නව අංකය 143 සහ 1/143 එකතු කරල නව අංකය දීල තියෙනවා.'5වී4' එවැනි උධෘතයන් 1/143 ?

උ: එහෙමයි.

ප්‍ර: 1973 වර්ෂයේදී නව නොම්මර දීල තියෙනව 1/143 ?

උ: එහෙමයි.

ප්‍ර: පැරණි නොම්මරය දීල තියෙන්නෙ 143 කොටසක් කියල ?

උ: එහෙමයි.

ප්‍ර: 1/143 පළමු වතාවට පටන් අරගෙන තියෙන්නෙ ලියවිලි 'වී4' අනුව 1973 දී ?

උ: එහෙමයි.

ප්‍ර: 1974, 75, 76, 77, 78, 79, 80, 81, 82, 83 යන වර්ෂ වලදීත් ඒ ආකාරයටම විස්තර කරල තියෙනව ?

උ: එහෙමයි.

ප්‍ර: 1984, 85 වර්ෂ වලට පැරණි නොම්මර සඳහන් කරල නැහැ?

උ: නැහැ"

(vide proceedings at page 174 and 175 in the appeal brief)

Having referred to the evidence led on behalf of the defendant as to the assessment numbers and the persons who occupied the premises in suit, I will now look at the position of the plaintiff-respondent in that connection. The plaintiff has failed to explain the way in which the possession of the premises was held and by whom the three sections of the house was occupied. She had not even visited the premises in suit since the year 1968.

Her evidence to that effect is as follows:

"ප්‍ර: අන්තිම වතාවට ගියේ කවද්ද ?

උ: 1968.

ප්‍ර: 1968 න් පස්සේ ගේ ඇතුලට ගිහිල්ල නැහැ?

උ: නැහැ."

(vide proceedings at page 123 in the appeal brief)

"ප්‍ර: අන්තිම වතාවට ඒ පිරිපස්සේ පොල් ගස් තියෙන හරියට ගියේ කවද්ද ?

උ: 1968.

ප්‍ර: 1968 න් පස්සේ පොල් ගස් තියෙන හරියට වත් ගිහිල්ල නැහැ ?

උ: නැහැ "

(vide proceedings at page 125 in the appeal brief)

I will now turn to consider the manner in which the learned District Judge has looked at the issue. He has come to the conclusion that there had been no premises under the assessment No.143/1. In coming to the said conclusion he has basically relied on the contents found in the documents V6, V7 and V10. V6 is a document in relation to the year 1960. No party has stated that there had been a separate assessment number allocated as 143/1 during that period. V7 is a reply to a letter sent by the lawyer to the plaintiff and therefore such a letter will not help to determine the question of allocation of a separate assessment number. V10 is a receipt issued by the Municipal Council in the year 1977 and it does not relate to the period in question.

Extracts of the relevant registers maintained at the Galle Municipality too, clearly show that there had been a separate assessment number as the No. 143/1, allocated to the rear section of the premises since the year 1973. The document marked V4 also establishes this position. Learned District Judge has not addressed his mind to those documents when he concluded that there had not been a section separated from the house occupied by the original defendant at the time Sumathipala came into occupation of that rear section of the house.

Moreover, the extent of the land referred to in the schedule "A" is only 7 perches. According to the documents marked V12 and V13, the house referred to in the schedule "A" consists of 1679 square feet whilst the premises bearing No.143/1 consist of 1157 square feet. Therefore, the extent in the house referred to in the schedule "A" alone cannot have an extent of 7 perches. Furthermore, the learned District Judge has not considered the evidence of Puspa Dayani de Silva who was an official witness from the Valuation Department. She has categorically stated that there had been two separate premises which were given the Nos.143 and 143/1 at the time the valuation was prepared for the purposes of determining the valuation and also the applicable rates for those premises. She has produced the documents V12 and V13 in support of her evidence. Accordingly, it is seen that there had been two premises even in the year 1971 during which period those assessments were prepared by the Valuation Department. More importantly, the document marked 1V3 shows that the defendant has rented out a part of the **front section** of the premises to one

Sirisena in the year 1968 and it was not the rear section identified as No.143/1 which was later occupied by Sumathipala.

Sumathipala himself also has given evidence stating that he became a tenant in respect of the rear section of the premises beraing No.143/1 under the brother of the plaintiff. Grama Sevaka of the area also has given evidence stating that Sumathipala occupied a house separated from the house occupied by the original defendant. Grama Sevaka has issued the document marked V8 on 28.10.1975 stating that Sumathipala was occupying the assessment No.143A. The said document had been rejected by the learned District Judge stating that it contains only the year and the date without the month been mentioned. In that document, the month of October is marked as "X". Letter "X" referred to therein is to mean the month of October. He has failed to appreciate even such a known fact. He has also said that it is an old document and therefore it cannot be accepted. Those reasons are palpably wrong.

In the circumstances, it is seen that the learned District Judge has not properly evaluated and analyzed the evidence when he decided that the house alleged to have been given to Sumathipala was part of the main house. Hence, it is clear that the learned District Judge has misdirected himself when he decided that there was no separate house which was assigned the assessment No.143/1 occupied by Sumathipala under the brother of the plaintiff.

For the aforesaid reasons, it is clear that the house alleged to have occupied by Sumathipala had been a separate house, distinct from the premises occupied by the original defendant at the time this action was filed. Hence, it is incorrect to have decided to evict the defendant and the persons holding under him in terms of the provisions contained in the Rent Act No.07 of 1972 on the premise that the deceased defendant had sublet a part of the premises to Sumathipala.

The next issue is the date or the period in which Sumathipala came into occupation of the rear section of the house. In the event the date on which Sumathipala came into occupation is decided as a date prior to 31st March 1972 then the plaintiff will not be able to have and maintain this action under the provisions of the Rent Act since the said Act came into operation only on 31st March 1972. Sumathipala himself has stated that he came into occupation on 12.10.1970. He remembered this date, particularly because the person who owned the lorry by which he was to bring the furniture to this house was killed on that date. [*Vide proceedings at page **213** in the appeal brief*[In fact the death certificate of the driver of the said lorry had been marked as V11. Learned District Judge has declined to address his mind to this document marked V11, having stated that it has no relevance to the issue. I am of the view that it is incorrect to have rejected such evidence on that basis.

The plaintiff in her evidence has stated that she visited this place for the last time only in the year 1968. (*Vide proceedings at pages 123 & 125 in the*

appeal brief). Therefore, the evidence of the plaintiff as to the period of occupation of Sumathipala cannot be considered reliable particularly when compared with that of the evidence of Sumathipala, he being the person who actually occupied the premises. Indeed, as mentioned before, there is preponderance of evidence to decide that the date on which Sumathipala came into occupation of the premises, had been a date, before the Rent Act came into operation. In the circumstances, it is my view that the learned District Judge has not properly evaluated the evidence as to the applicability of the provisions contained in the Rent Act as well. Therefore, it is incorrect to have come to the conclusion that the provisions of the Rent Act are applicable in this instance.

For the aforesaid reasons, it is seen that the learned District Judge has not given acceptable reasons for his findings. Indeed, the reasons assigned by him are erroneous and irrational. In fairness to the learned District Judge, it must be noted that even though he has written the judgment in this case, he had not seen any witness giving evidence. Entire evidence had been recorded before the judges who preceded him.

When a judgment is perverse and irrational, it becomes a duty of the appellate court to correct such findings. If not, the appellate courts are always reluctant to interfere with the findings arrived at, upon considering the facts of the case. This proposition in law was upheld in the cases including that of:

- ***De Silva and others v. Seneviratne and another [1981 (2) SLR 8]***
- ***Fradd v. Brown & Co.Ltd. [20 NLR at page 282]***

- ***D.S.Mahawithana v. Commissioner of Inland Revenue [64 NLR 217]***
- ***S.D.M.Farook v. L.B.Finance [C.A.44/98, C.A.Minutes of 15.3.2013]***
- ***W.M.Gunatillake vs. M.M.S.Puspakumara [C.A.151/98 C.A.Minutes of 9.5.2013]***
- **Alwis v. Piyasena Fernando [1993 (1) SLR at page 119]**

As mentioned hereinbefore, this appeal falls into the first category of cases referred to in the preceding paragraph. Accordingly, I set aside the judgment dated 11.9.1998 of the learned District Judge of Galle. I also dismiss the plaint of the plaintiff-respondent. The appellants are entitled to the costs of this appeal.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL