

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

C.A. No. 1037 / 99 F

D.C. Colombo No. 17595 / L

Kariyawasam Bendigodagamage
Premawathie,
No. 83, Rajagiriya Road,
Rajagiriya.

Plaintiff

Vs.

Mahavithanage Dona
Engalthinahamy, (Deceased)
Paranavithanage Don Jayathilake
Perera,
No. 100, Rajagiriya Road,
Rajagiriya.

Substituted Defendant

AND NOW BETWEEN

Kariyawasam Bendigodagamage
Premawathie,
No. 83, Rajagiriya Road,
Rajagiriya.

Plaintiff Appellant

Vs

Mahavithanage Dona
Engalthinahamy, (Deceased)
Paranavithanage Don Jayathilake
Perera,
No. 100, Rajagiriya Road,
Rajagiriya.

Substituted Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.
COUNSEL : C. E. De Silva with Anoma Gunathilake for
the Plaintiff Appellant
Sanath Weerasinghe for the Substituted
Defendant Respondent
ARGUED ON : 07.10.2013
DECIDED ON : 26.06.2014

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondent (hereinafter referred to as the Respondent) in the District Court of Colombo seeking inter alia for a declaration of title to the premises described in the 2nd schedule to the plaint and to eject the Respondent from the said premises. The Respondent filed an answer denying the averments contained in the plaint and pleaded that the premises in question were governed by the Rent Act No 07 of 1972 and he was the lawful tenant of the said premises and prayed for a dismissal of the Appellant's action. After trial the learned Additional District Judge has delivered a judgement in favour of the Respondent. Being aggrieved by the said judgment dated 02.12.1999 the Appellant has preferred the present appeal to this court.

It has transpired from the evidence that the original owner and the land lord of the premises in suit was Wanigaarachchige Don Agnes Perera and Paravithanage Don Martin Perera was the tenant. Said Martin Perera had paid

rent of the premises in suit to said Wanigaarachchige Don Agnes Perera up to January 1972. Thereafter upon a deed of gift (P 1) the Appellant became the owner of the premises in suit on 23.11.1972 and even at that time the Respondent's father Martin Perera was in occupation of the said premises as the tenant and the Appellant accepted rent from said Martin Perera which was deposited at the Municipal Council of Kotte. Said Martin Perera died on 11.09.1986. The Appellant has admitted the tenancy of said Martin Perera. Said evidence has not been challenged by the Appellant.

Thereafter deceased Defendant Respondent Dona Engalthinahamy being the widow of said Martin Perera has deposited rent in the Municipal Council of Kotte. The Appellant's contention was that the said Respondent has failed to pay rent and hence they were in unlawful occupation of the said premises. In this regard the Respondent has produced an extract from the rent register issued by the Municipal Council of Kotte marked V 12. Said document has proved that the Respondent had deposited rent at the Municipal Council of Kotte for the period from September 1982 to June 1999. Said evidence clearly shows that the rent had not been in arrear for the period relevant to this action.

When considering the Appellant's contention with regard to the non-payment of rent, the most important factor to be noted was that the mode of payment of rent followed by said Martin Perera that was to deposit rent at the Municipal Council of Kotte. The Appellant and her predecessor in title Agnes Perera had accepted rent from the Municipal Council of Kotte. V 1 to V 9 was ample evidence to conclude that rent deposited at the Municipal Council of Kotte was accepted by the Appellant and also by her predecessor in title Agnes Perera. Therefore it was crystal clear that the Respondents had paid rent to the Appellant

by depositing the same at the Municipal Council of Kotte. Upon the said evidence can the Appellant contend that the Respondent did not pay rent to the Appellant? My answer is 'no'.

In this regard the Appellant has further submitted that the Respondent had deposited rent at the Municipal Council of Kotte in the name of Martin Perera even after his death it and thereby the Respondent has failed to pay the rent in his name. The Appellant had not disputed the fact the Respondents being the surviving spouse and the child of said Martin Perera respectively shall be deemed to be the tenant of the said premises. Section 21 of the Rent Act No 7 of 1972 stipulates that the tenant of any premises may pay the rent of the premises to the authorized person instead of the landlord. Said Section does not stipulate that the rent should be paid in the name of the tenant. It is apparent from the said provisions of the Act what is required is to pay the rent of the premises to the landlord or to the authorized person.

The learned counsel relied upon the decision in *Husseniya Vs. Jayawardena and Another* [1981] 1 SLR 93. It was held in the said case that "Under our law a stranger to a contract acting without authority may validly is made in the name of the discharge the debtor's obligation provided the payment is made in the name of the debtor and for his benefit. In the present case, however, the 2nd defendant who was a sub-tenant of the 1st defendant had failed to establish that he deposited rents in the name of the 1st defendant or on his behalf and the evidence in fact pointed to the deposit having been made by the 2nd defendant in his own name. Such a deposit was not effective to discharge the 1st defendant's liability for arrears of rent to the landlord.

Further, the provisions of section 21 of Rent Act, No. 7 of 1972, having been invoked on behalf of the 2nd defendant, inasmuch as the payments were made to the Municipality, the 2nd defendant had to establish that he had so paid the rents in the name of or on behalf of the tenant (1st defendant) to the Municipality, which in terms of the section was a statutory agent of the landlord. The section only contemplates the deposit of rent being made by the tenant and the deposit made by the 2nd defendant did not attract the benefit of the provisions of section 21.”

In the present case the facts are different from the ‘Husseniya’s’ case. But the Supreme Court in the said case has held that “the 2nd defendant had to establish that he had so paid the rents in the name of or on behalf of the tenant (1st defendant) to the Municipality, which in terms of the section was a statutory agent of the landlord. The section only contemplates the deposit of rent being made by the tenant.”

On the strength of the said decision I am of the view that since the Respondent had become the statutory tenant of the premises in question upon said Martin Perera’s death what was required that the rent to be deposited at the Municipal Council of Kotte as was done before. In the said circumstances I am of the view that the learned trial Judge has considered the evidence led in this case in correct perspective. Hence I see no reason to interfere with the said judgment of the learned Additional District Judge dated 02.12.1999. Therefore I dismiss the appeal of the Appellant with costs.

Appeal allowed.

Judge of the Court of Appeal