

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

K. Ariyaratne,

Bombuwala,

Kalutara.

**CA No: 869/97(F)**

**Plaintiff – Appellant**

**DC Kalutara 4410/L**

**Vs.**

S. Sunil,

Bombuwala,

Kalutara.

**Defendant – Respondent**

**BEFORE** : P.W.D.C. JAYATHILAKE, J

**COUNSEL** : A. Dharmaratne for the Plaintiff - Appellant.  
C.J. Lalduwahetti with Lakmi Silva for the  
Defendant Respondant.

**ARGUED ON** : 06.06.2014

**DECIDED ON** : 09.10.2014

**P.W.D.C. Jayathilake J.**

Kaluwadewage Ariyaratna of 'Aripic', Palayangoda, Bombuwala, the Plaintiff Appellant here in after referred to as the Plaintiff has filed the case bearing No: L 4410 in the District Court of Kalutara seeking *inter alia* for a judgment to eject S. Sunil of Wakkada. Bombuwala, the Defendant Respondent here in after referred to as the Defendant from the land described in the schedule to the plaint on the basis that the Defendant had been the license of the Plaintiff's predecessor in title and after becoming the owner of the property, the Plaintiff had withdrawn the licence by the letter dated 24.04.1995 sent by his lawyer demanding the Defendant to quit

and handover the possession of the land, and the Defendant without even replying to the said letter was still continuing to occupy the building situated in the said land.

The Defendant has taken up the possession that the subject matter of the case was owned by one P.L.D. Premarathne and the Defendant's father S. Seditis who ran a bicycle repair shop in the premises had obtained the land on rent from said Premarathne. The Defendant has stated that after the death of his father in 1994, he was carrying on the business. Therefore, Defendant is holding the position that he is a protected tenant under the rent Act and his tenancy had not been terminated in terms of the Rent Act.

The District Judge has accepted the fact that the Defendant's father had been the tenant of the premises in question and the Defendant has become the tenant after the demise of his father by operation of law. Therefore, he has decided to dismiss the plaint on the basis that Plaintiff must taken steps under the provisions of the Rent Act if the Plaintiff wants to eject the Defendant.

The Plaintiff Appellant has filed this appeal being aggrieved by the said judgment. The argument of the learned Counsel for the Accused Appellant is that the Plaintiff's case was a *Reai Vindicatio* Action. Therefore, once the title of the Plaintiff has been proved, the burden lies on the Defendant to prove that he has a legal right to be in the possession of the property. The learned Counsel submits that the

Defendant in his evidence at the trial has admitted the title of the Plaintiff. The receiving of the letter by the Defendant sent to him by the Plaintiff demanding to handover vacant and peaceful possession of the land which has been marked as P3 was an admission. The learned Counsel argues that the Plaintiff has proved all ingredients in a Reai Vindicatio Action on those two points. Two decided cases namely *Theivandran Vs. Ramanathan Chettiar* (1986 2 SLR 291) and *Kandappa nee Bastian Vs. PonnambalamPille* (1993 1 SLR 184) have been cited to emphasise the legal possession submitted by the counsel. In *Ramanathan Chettiyar* case, it has been held, “*when the legal title to the premises is admitted or proved to be in the Plaintiff, the burden of proof is on the defendant to show he is in lawful possession.*” And the same principle has been accepted in *Pahnambalam* case holding “*since title to the premises was admittedly in the Plaintiff, the burden was on the Defendant to show by what right he was in occupation of the premises*”.

The other point raised by the learned Counsel for the Accused Appellant is that the absence of tenancy agreement between either the Plaintiff or the Plaintiff’s predecessor in title and the Defendant. He emphasised the fact that the Defendant in his answer has specifically states that there was no tenancy agreement between the Plaintiff or Plaintiff’s predecessor in title and the Defendant. There the learned Counsel again cites the *PonnambalamPille* case where the court has considered the concept of ‘mutual assent’ that should be there in creating a tenancy agreement.

The learned counsel analyses the evidence of the Defendant to show that the Defendant had failed to prove that even Premarathna who was the original owner according to the Defendant had collected the rent for the particular premises from the Defendant's father. It has been quoted the following passage from *Imbaldeniya Vs. D.De.Silva* – 1987 – 1 SLR 367.”

*“In view of the above holding, I cannot agree with the consent of counsel for the Defendant Appellant that the entirety of the protection granted by the rent Act No: 07 of 1972, is premises in suit and not the contract of tenancy. The rent Act affords statutory protection in respect of rent controlled premises to a tenant who has entered the premises on a valid contract of tenancy. The rent restriction Act does not apply where the true owner sues the Defendant as trespasser.”*

The counsel for the Defendant Appellant has not commented on the findings of the learned District Judge with reference to the Plaintiff's own evidence that Sediris, the father of the Defendant had been in the possession of the premises in suit even prior to the transfer of the ownership to Sumeda Thero who was the Plaintiff's predecessor.

The fact that when we find the receipts of payment to a place in Bobuwala as rent and when it has not been proved that these payments had been made in respect of another place, for a point of view of a reasonable man it should be accepted that this rent had been paid to the place where Sediris was in possession. Admittedly

the area where the subject matter is situated is an area which comes under the Rent Act. It is an undisputed fact that Sediris ran a bicycle repair shop and it was run by the Defendant following his demise. There by the Defendant's coming to the legal position of his father by operation of law is something that cannot be excluded. Thus, the existing law compels this court to agree to the contention of the Counsel for the Defendant Respondent that once it has been proved the existence of the tenancy, the Defendant does not dispute the proprietary rights of the Plaintiff, and the premises comes under the provisions of the Rent Act, the Plaintiff can eject the Defendant only under the provisions of the Rent Act. Therefore, this court sees no reason to interfere with the judgment of the learned District Judge and decides that the appeal shall be dismissed.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**