

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

C.A. No. 1146/95(F)  
D.C.Kandy No.2228/RE

D.H.Abeygunasekera  
No. 15/1, 3<sup>rd</sup> Lane, Koswatta,  
Nawala, Rajagiriya

**Original Plaintiff (Decd)**

**Vs**

K. V.Ramasamy  
No. 308, Trincomalee Street,  
Kandy

**Defendant**

**AND NOW BETWEEN**

V. Ramasamy  
No. 308, Trincomalee Street,  
Kandy

**Defendant-Appellant**

Roshni Angelique FoenanDer  
No.15/1, 3<sup>rd</sup> Lane, Koswatta,  
Nawala, Rajagiriya

**Substituted-Plaintiff-Respondent**

**BEFORE: Deepali Wijesundera J.,**

**M.M.A. Gaffoor, J.,**

**COUNSEL: H.Withanachchi for the Defendant-Appellant**

**Chandimal Mendis with Viraj Vithanage for the Plaintiff-  
Respondent**

ARGUED ON: 24.02.2015

DECIDED ON: 25.06.2015

M.M.A. Gaffoor J.,

The Plaintiff-Respondent (hereinafter referred to as "the Plaintiff") filed this action on 31.08.1989 against the Defendant-Appellant (hereinafter referred to as "the Defendant") for ejectment and damages on the ground of reasonable requirement for him and for his family members (para. 4 of the Plaint), The Defendant filed answer denying the Plaintiff's action and pleaded that his requirement is greater than that of the Plaintiff and that the Plaintiff was interested in selling the premises and therefore the Plaintiff's action be dismissed.

Originally the Plaint was filed by two Plaintiffs, but when the Plaint was amended the 2<sup>nd</sup> Plaintiff was dropped and the 1<sup>st</sup> Plaintiff continued with this action.

The Answer was amended twice and the 2<sup>nd</sup> amendment was after the trial began and the Issues were framed.

At the trial two Admissions were recorded and the Plaintiff raised Issues 1-9 and the Defendant raised Issues 10-13.

According to the evidence in this case, the premises were given on rent by the Plaintiff's mother E.H. Abeygunasekera, the Defendant and she died in 1981 and thereafter the Plaintiff became the landlord. Thereafter the Plaintiff instituted this action for ejectment of the Defendant on the ground of reasonable requirement of the Plaintiff and

the members of his family, in terms of Section 22(6) of the Rent Act No. 7 of 1972.

The two Admissions were that the Defendant had received the notice to quit to terminate the tenancy by 31.07.1989 and that the Plaintiff's mother, who was the landlord, in 1974, gave the premises on rent to the Respondent and the said Plaintiff's mother was dead. As the Plaintiff wanted the premises for his reasonable use, he has given a year's notice from 31.07.1988 to 31.07.1989 to the Defendant, who first denied receipt of this notice but later has admitted that he received the said notice. After the one year period, the Plaintiff says that the tenancy was terminated. The Plaintiff has given the notice to quit terminating the tenancy by 31.09.1989. This notice is marked as "P1".

The purpose of giving a year's notice to the tenant is to enable him to find a suitable residence for him in the event if he is ejected from the present residence . This is a statutory requirement under Section 22(6) of the Rent Act No. 7 of 1972. The Plaintiff has complied with this requirement. But the Defendant has not taken any step to find an alternative residence after the receipt of the said notice.

The only ground that is raised by the Defendant against the reasonable requirement of the premises by the Plaintiff was that the Plaintiff was planning to sell the premises and therefore his averment in the Plaint that he wanted the premises for his reasonable use is false. But whether this ground is a valid ground to deny the rights of the Plaintiff is a matter to be decided on the evidence led in this case.

The Plaintiff in his evidence has said that the Defendant had been asking him on several occasions to sell this property to him but he was not willing. As the price of property <sup>keev</sup> going up in open market, the Plaintiff wanted 3 or 4 lakhs but the Defendant offered only 2 lakhs why the Plaintiff was not seriously interested in selling the premises in suit to the Defendant is not clear from his evidence. But only one reason was clear that is he wanted the premises for his and his family as their residence, as they were living in a rented house.

From the evidence of the Plaintiff it is very clear that the Plaintiff has no other house on his own other than the premises in suit. His wife has a house in Nawala, but it is not relevant to this case. In the case of Sulaiman vs Aboobucker 1992(1) Sri Lanka Law Report page 314, it was held "*To sue the tenant on the ground of reasonable requirement, the landlord should not own a house or he should not own no more than one house. The expression "landlord" does not include his wife.*" Hence, the fact that his wife has a house is not a ground to be considered against the Plaintiff."

*At the trial, the Plaintiff raised, inter alia Issue No. 4 and the Defendant raised Issue No.11 as follows :*

**No.4** *Are the premises insuit reasonably required by the Plaintiff as stated in the Plaint?*

**No.11** *Is the need of the Defendant to possess this property greater than that of the Plaintiff?*

After considering the evidence led in this case, the learned District Judge answered the Issue No. 4 affirmatively and Issue No.11 as "does not arise.

At the end of the trial, the learned District Judge has come to a finding that the Plaintiff has given a valid notice to terminate the contract of tenancy between the Plaintiff and the Defendant and damages in a sum of Rs. 250/- per month and entered judgment in favour of the Plaintiff as prayed for in paragraph (a) and (b) of the prayer to the Plaint.

The Defendant has preferred this appeal to this court against the judgment entered by the learned District Judge in this case, while the appeal was pending in this court, the original Plaintiff died and the daughter of the deceased Plaintiff has been substituted. This substitution was objected to by the Defendant but on 26.05.2000, Edussuriya J., allowed the application for substitution.

The Defendant in his original answer denied the Landlordship of the Plaintiff but in the amended answer he has taken a different stand and accepted the Plaintiff as his landlord. When the tenant denies landlordship, his tenancy comes to an end and he has no right to occupy the premises. However, since the Defendant had changed position and accepted the Plaintiff as his landlord, termination of the tenancy on that ground is not taken into consideration. Since the plaintiff is dead and his daughter Roshini Angelique Foenander is substituted in his place, the question now arises is whether the reasonable requirement of the premises by the substituted Plaintiff is valid or greater.

It was contended on behalf of the Defendant that the action was an action by an individual Plaintiff, who sought personal relief for possession for himself in respect of the premises in suit, and in the absence of the name of the person mentioned in the decree under Section 22(8) of the Rent Act, the demise of the Plaintiff concludes the ..... and there is nothing to transmit.

This evidence is untenable. In the case of Arnolis Appuhamy vs De Alwis- 60 NLR 141 Sansoni J., took the view that in a case based on reasonable requirement of a premises for the residence of the Plaintiff Landlord, who died pending appeal, the decree for ejection of the Defendant tenant was not affected by the subsequent death of the Plaintiff pending appeal.

In support of this position, His Lordship referred to an English case of Goldthorpe vs Bain (1952) 3 Q.B.455 where the question arose that after obtaining an order for possession the Plaintiff died and whether such an order was personal to the Plaintiff and ceased at his death. The Court of Appeal held that the order was not personal to the landlord who obtained it, but concerned a proprietary interest of the landlord which passed to his personal representatives.

Undoubtedly the decree in an ejection action once entered confers a proprietary interest on the Plaintiff Landlord because the cause of action which was personal to the Plaintiff becomes merged in the decree for ejection. Thus, the proprietary interests conferred in the

Plaintiff, in this case, by the decree, pass to his daughter, his legal representative on the Plaintiff's death.

Finally, the only matter that has to be considered is the comparative needs of the Plaintiff and the defendant in the case. It is admitted that the Plaintiff was a retired police officer, who was a pensioner and was living in a rented house. His wife is ailing and the children are living in Boralesgamuwa and paying a rent of Rsx. 15,000/-a month. Whereas the Defendant is the owner of the business premises situated in the same road in which the premises in suit is also situated. There is no evidence that the Defendant, though is able to buy another house, had made any effort to find an alternative residence in Kandy after the receipt of the one year's notice from the Plaintiff.

In the case of Weerasena vs Mathupala 1992 (1) Sri Lanka Law Report 389, W.N.D. Perera J held that :*the efforts made by the tenants to find alternative accommodation must be taken into account where the tenant has not made serious attempts to find alternative accommodation although had handed over the basement and ground, this would count as a factor against him.*"

Comparing the needs and inconvenience of the Plaintiff and the Defendant", the court has to form an opinion whether the premises are reasonable required for the occupation as a residence for the Landlord. The tenant 's difficulties do not come into the matter at all. The only thing that matters to the reasonableness of the Landlord's requirement" per Basnayake J., in Atukorale vs Navaratnam 49 NLR 461 at p. 469.

Considering the evidence led in this case, I am of the view that the Appellant, who had the means of purchasing an alternative premises for his residence, apart from the business premises ( the press) which he owns now, has failed to buy an alternative premises, but has kept on pressurizing the Plaintiff to sell the premises in suit for a lesser price.

Also the fact that the deceased Plaintiff's ailing widow and children are iiving in a rented house and paying Rs. 15,000/- as rent per month are matters to be looked into on the question of reasonable requirement of the landlord. In determining the question of reasonableness of the landlord's requirement, I hold that the requirement of the Landlord is greater and therefore the Plaintiff is entitled to a decree of ejection.

We therefore affirm the judgment of the District Judge and dismiss the appeal with costs here and the court below.

**JUDGE OF THE COURT OF APPEAL**

**Wijesundera J**

I agree.

**JUDGE OF THE COURT OF APPEAL**