

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

In the matter of an appeal under Sec.
755(3) of the Civil Procedure Code.

Sunil Rathnayake,
Of Thalakola Wewa,
Mahawa.

C.A. Case No. 103/99(F)

Vs.

D.C. (Anuradhapura)

K.H.G.Sirisena,

Case No. 15066/M

of "Wasana Jewellers"

Anuradhapura Road,

Thambuththegama.

Defendant

And now Between

Sunil Rathnayake,
Of Thalakola Wewa,
Mahawa.

Plaintiff – Appellant

Vs.

K.H.G.Sirisena,

of "Wasana Jewellers"

Anuradhapura Road,

Thambuththegama.

Defendant – Respondent

BEFORE

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

COUNSEL

: Nalaka de Silva for the

Plaintiff Appellant.

Dr. Sunil Cooray for the

Defendant Respondent.

ARGUED ON

: 11.03.2015

DECIDED ON

: 24.07.2015

P.W.D.C. Jayathilake, J

Admittedly, the Plaintiff Appellant is the permit holder to the premises described in the schedule to the Plaint, namely, Lot No. C 68 of the Plan No. C/KL/44/95 of the Surveyor General. After constructing a two storeyed building for commercial purpose, he had commenced a hotel business by the name, R.M.F Cafe and Restaurant. As he had had some monetary transactions with the Defendant Respondent, at one stage Appellant had to handover the said business to the Respondent on conditions agreed by both. The course of action of the Appellant was the Respondent's refusal to return the possession on settlement of loan as agreed.

The Defendant Respondent, in his answer, has stated that as he had given Rs. 750,000/= to the Appellant for his financial requirements, they have entered to an agreement that if the Appellant was unable to pay Rs. 750,000/= with 30% interest to the Respondent within 1 ½ years from the date of the agreement, that is 04.06.1987, the Appellant shall request the Mahaweli Authority to issue the lease in the name of the Respondent. The Respondent, in his answer, has prayed for the dismissal of the plaint and as an alternative relief he has prayed, if the court decided the case in favour of

the plaintiff, make an order to the Appellant to pay Rs. 750,000/= with 30% interest from the relevant date to the Respondent.

The learned trial judge has come to the conclusion that the permit issued to the Appellant in respect of the subject matter is subject to invalidation on the basis of violating the conditions of the permit. As the violation of the condition, what the learned trial judge had meant was the transferring of the possession of the subject matter to a 3rd person. But, the question arises whether condition agreed with by the Appellant and the Respondent that the Appellant is to request the Mahaweli Authority to give lease in the name of the Respondent is enforceable. The opinion of this court is that it was not a valid condition enforceable by law, as the authority concerned was not a party in the agreement. As stated above, though the learned District Judge concluded that the permit in Appellant's name is subject to invalidation it shall be a matter to be considered by the authority concerned. Therefore, this court is of the view that the learned District Judge was erroneous in deciding that the permit had been invalid since 1986.

As such, this court sets aside the judgment of the learned District Judge which dismissed the Plaintiff.

The court decides that the permit in the name of the Appellant marked as P 5 is a valid one as the Mahaweli Authority has not taken a decision to call it off. Accordingly, this court decides that the Appellant is entitled to enjoy the rights granted by the said permit and this makes the Appellant entitled to the relief prayed under prayer II of the Plaint. Furthermore, this court decides that the Respondent is entitled to the relief prayed for under payer b of the answer. The District Judge of Anuradhapura is directed to enter the decree accordingly.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL