

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

In the matter of an appeal in terms of Section
755 (3) of the Civil Procedure Code.

S. Charles Dannister Perera

"Nirmali", Diyalagoda

Maggon.

PLAINTIFF - APPELLANT

D.C Kalutara Case No. 3970/L

C.A. Appeal No. 906/1997 (F)

Vs

1. M. Roslyn Fernando of
No. 71/2, Customs Road
Nallahena
Beruwala.

2. M. Somawathi of
No. 67, Customs Road
Nallahena
Beruwala.

DEFENDANT - RESPONDENTS

BEFORE

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

COUNSEL

: H. Withanachchi for the

Plaintiff - Appellant.

Daya Guruge for the 2nd

Defendant - Respondent.

ARGUED ON

: 24th February, 2015

DECIDED ON

: 10th August, 2015

Deepali Wijesundera J.

The plaintiff appellant has filed an action against the defendant respondents in the District Court of Kalutara for a declaration of title and ejection of the defendant from the house bearing assessment no. 67A standing on Lots A and B of "Galaboda watte" morefully described in the schedule to the plaintiff. The learned District Judge after trial has dismissed the action holding that the defendant was the tenant of the premises in suit. The plaintiff appellant has filed the instant application against the said judgment.

The plaintiff appellant's mother has been the original owner of the premises in suit; she has transferred the property to the plaintiff by deed *No. 205 dated 15/09/1984*. Prior to this deed plaintiff's mother Agnes

Fernando has given the premises on a lease to Roselyn Fernando the first defendant in the District Court action. The plaintiff appellant by lease agreements *No. 1321 dated 28/04/1987* and *No. 1643 dated 01/09/1989* has given the premises to the first defendant. There is no document to show that there was a lease agreement with the defendant respondent (second defendant in the District Court action) by the plaintiff appellant or his mother.

The submission of the plaintiff appellant was that the first defendant respondent without the consent of the plaintiff or his mother had placed the second defendant respondent in occupation of the said premises and that the plaintiff was unaware of it until his mother received a notice from the Rent Board of Kaluthara. At the trial the daughter of the first defendant has given evidence for the plaintiff and stated that she was in occupation of the said house and that the second defendant came to share a part of the house on the undertaking given to her to vacate the house along with her. She has further stated although they vacated the house the second defendant continued to occupy the house without the permission of the plaintiff.

The learned counsel for the plaintiff appellant stated that learned District Judge was in error when he cast a doubt on **P3**, **P4** and **P5** the

lease agreements which were produced without any objections from the defendants. He further stated that the District Judge has failed to analyse the evidence of the plaintiff and witness Chandra who corroborated the plaintiff's evidence and also the documentary evidence marked and produced by the plaintiff appellant.

The plaintiff appellant further stated that the District Judge is not warranted to draw an inference that the lease agreements were prepared for the purpose of the said case when the second defendant did not call for such finding by way of an issue.

The plaintiff appellant also submitted that the learned District Judge has not stated any reasons as to why the evidence of the plaintiff and Chandra Jayasuriya were rejected and the second defendant's evidence accepted. He also stated that the title of the plaintiff appellant was established, therefore the burden was on the second defendant to prove his legitimate occupation of the premises, and that there was no document to show that the second defendant had a tenancy agreement with either the plaintiff appellant or his mother.

The only argument by the second defendant respondent was that the action of the plaintiff appellant is misconceived in law whereas the second defendant was occupying the premises in the capacity of a tenant hence the action should have been instituted under the provisions of the Rent Act.

The respondents mentioning documents marked as **2V4B** stated that on 30/08/1990 the second defendant made an application to the Rent Board and by **2V4B** the Rent Board has asked the plaintiff's mother not to harass the second defendant.

The documents marked by the defendants are all documents after the said premises were transferred to the plaintiff. There is no evidence to show that there has been an agreement with the mother of the plaintiff. The lease agreement marked by the plaintiff shows that there has been an agreement with the first defendant and not with the second defendant respondent. The daughter of the first defendant has given evidence and stated that she occupied the said premises and the second defendant came to share the house with her on the undertaking given to her to leave the premises when they left the house. This evidence has not been considered by the learned District Judge. The second defendant has deposited rent in the Urban Council from September 1990 this is long after the plaintiff appellant became the owner of the premises. All the

documents marked and produced by the second defendant are documents acquired after the house was transferred to the plaintiff in 1984. There isn't a single document to show there was a lease agreement with the plaintiff's mother as claimed by the second defendant.

The title of the plaintiff was not disputed by the defendant therefore the defendant had to prove that she had a valid lease agreement with the plaintiff. The learned District Judge has misdirected himself when he came to the conclusion that the second defendant was the lawful tenant of the plaintiff without any evidence or documents to prove it.

For the afore stated reasons we set aside the judgment of the learned District Judge of Kalutara dated 13/06/1997 and allow the application of the plaintiff appellant.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree

JUDGE OF THE COURT OF APPEAL