

141/99(F)

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

H.S.L.Peiris

No.285, Mahawatte Road,

Colombo.

Plaintiff

C.A.Case No:-141/99(F)

D.C.Colombo Case No:-11950/MR

V.

Ceylon Scout Council

No. 65/9, Sir Chittampalam

Gardiner Mawatha, Colombo 12.

Defendant

AND

Ceylon Scout Council

N0.65/9, Sir Chittampalam

Gardiner Mawatha, Colombo 12.

Defendant-Appellant

V.

H.S.L.Peiris

No.285, Mahawatte Road,

Colombo.

Plaintiff-Respondent

Before:- H.N.J.Perera,J.

Counsel:-Rohan Sahabandu P.C with S.Kumarawadu for the Defendant-
Appellant

Ranjan Gooneratne for the Plaintiff-Respondent

Argued On:-01.11.2013

Written Submissions:- 04.11.2012/05.12.2013

Decided On:-29.01.2016

H.N.J.Perera, J.

The plaintiff has filed this action on three causes of action , to recover a sum of Rs.900,000/- as damages.

The first cause of action is based on the plaintiff having to live without a house, furniture and other items which are sentimental value to him, such as books, clothing, etc, as a consequence of the alleged demolition of the house in which he was living as a tenant of the defendant.

The second cause of action is based on the ejectment of the plaintiff from the premises except under the due process of law and for breach of the alleged agreement.

The third cause of action is for the recovery of a sum of Rs.900,000/-for effecting repairs and carrying out other maintenance work and improvements to the premises alleged to have been done by the plaintiff.

The plaintiff-respondent's position was that he was the tenant of the premises in question after the death of his father and that on or about 25.02.1991 the defendant-appellant who was the owner and the

landlord of the premises in question demolished the entire house, whilst he was away. The plaintiff's father was the original tenant of the said premises until he died in 1987 and as the other children were abroad, the plaintiff succeeded to tenancy.

The defendant admitted the fact that the plaintiff's father was a tenant at one time but denied the tenancy of the plaintiff. The defendant also denied that any cause of action had been accrued to the plaintiff-respondent as he was occupying the said premises as a trespasser. After trial the learned trial judge delivered judgment in favour of the plaintiff granting 6 lakhs as damages and costs. Aggrieved by the said judgment of the learned trial Judge the defendant-appellant had preferred this appeal to this court.

The plaintiff has stated that he continued to live as a tenant at the said house after the death of his father and also admitted the fact that he did not have any rent receipts or any other documents to prove that he paid rent to the defendant in this case. But the plaintiff gave evidence and also had led evidence of the witness Saranapala Malalasekera who also resided at the same land as a tenant to establish the fact that he did possess and continued to occupy the said house after the death of his father until the time it was demolished by the defendant.

The defendant's witness Hemasiri Wijesinghe who was a member of the Executive Committee of the defendant Council, in his evidence stated that there was a discussion between the Council and the plaintiff for the plaintiff to purchase this house together with the land thereto. He has in giving evidence in court has admitted later in cross examination that the said discussion was held as the plaintiff was the tenant of the said premises. The said witness in his evidence has very clearly admitted that there was landlord-tenant relationship between the plaintiff and the defendant. Therefore the learned trial Judge in her judgment has come

to a clear conclusion that there is evidence to establish the fact that the plaintiff lived at this house as a tenant of the defendant until it was demolished by the defendant.

The main contention of the learned President's Counsel for the defendant in this case was that the learned trial Judge had acted on evidence not supported by legal evidence and in awarding damages, erred in law in not giving cogent reasons for arriving at the figure of Rs.600,000/- award of damages. It was the position of the learned Counsel that there was no acceptable legal evidence tendered by the plaintiff to get the sum awarded.

The plaintiff in his evidence has stated that he is claiming Rs. 900,000/- as damages. When asked to compute the damages , he stated that he is claiming Rs.900,000/-for the money spent by his father to improve the house and the amount he has spent to improve the house and for the movables lost. The plaintiff has stated that his father spent about Rs.100,000/- for improvement during his life time. But no evidence was led and no documents were produced to prove the same. There was no evidence to show the nature of the improvements made by the father as to how much he has spent on such improvements.

Further, the plaintiff has stated that he has put up a pantry and garage and he has spent Rs.100,000/- for the said improvements. The plaintiff failed to produce any documentary evidence to prove the same. He did not call any witness to prove that he has in fact built the said pantry and the garage. He has failed to lead any evidence to show the nature of the improvements made by him, about the size and the materials used for the construction of the said improvements, no estimates or bills were produced by the plaintiff to prove that in fact he has spent such an amount for the said purpose. The plaintiff, also failed to call any witness to prove that he has bought building material and employed persons and

paid remuneration to construct the said pantry and the garage. There was no material to indicate the nature of the improvements done by the plaintiff and to assess the damages claimed by him. There is no evidence oral or documentary other than the evidence of the plaintiff that he and his father has spent Rs.200,000/- on repairs and improvements. There is no material of any kind upon which a court could assess, except by a process of pure speculation. Notwithstanding the absence of such evidence, the learned trial Judge has awarded a sum of Rs. 200,000/-for the improvements made by the plaintiff and his father to the said building.

In *Wijekoon V. Panditha* 21 N.L.R 21 it was held that :-

“Where a plaintiff comes before a court alleging that a wrong has been committed and claiming damages in respect of the wrong, he should put his case before court and prove his damages before the defendant is called upon, even though the defendant puts in a plea which is for him to substantiate.”

In *Wijewardene V. Noorbhai* 28 N.L.R 430 it was held that plaintiff was entitled only to claim the actual damages sustained.

It was further held in *W.H.Bus Co.Ltd V. Samaranayake* 55 N.L.R 182 that the plaintiff should adduce precise proof of the pecuniary loss suffered.

In *Mrs. Sirmavo Bandaranayake V. Times of Ceylon Limited* 1995 (1) S.L.R 22, it was held that:-

“Even in an ex parte trial, the judge must act according to law and ensure that the relief claimed is due in fact and in law, and must dismiss the plaintiff’s claim if he is not entitled to it.”

It was further held that:-

“Section 85(1) requires that the trial Judge should be “satisfied” that the plaintiff is entitled to the relief claimed. He must reach findings on the relevant points after a process of hearing and adjudication. This is necessary where less than the relief claimed can be awarded if the Judge’s opinion is that the entirety of the relief cannot be granted. Further, sections 84,86 and 87 all refer to the Judge being “satisfied” on a variety of matters in every instance; such satisfaction is after adjudication upon evidence.”

I am of the opinion that the plaintiff-respondent has failed to lead evidence and prove that the defendant-appellant and his father had spent Rs.200,000/- on improvements and repairs to the said building.

The plaintiff has claimed another Rs.100,000/- for the furniture, clothes and goods that were in the house at the time of demolition. There is evidence to show that the plaintiff was residing at the said premises until the day of demolition. Certainly there must have been some furniture and other household items belonging to the plaintiff at the time of the demolition. The plaintiff has been residing all alone at the time. The plaintiff in his evidence produced the document marked P9 – a list of movables lost from the premises. This document when produced was not challenged by the defendant. The plaintiff has closed his case marking documents P1 to P13 without any objections from the defendant-appellant. The *curius curiae* of the original civil court followed for more than three decades in this country is that the failure to object to documents, when read at the closure of the case of a particular party would render them as evidence for all purposes of the law. *Balapitiya Gunanada Thero V. Talalle Methananda Thero* [1977]2 Sri.L.R 101, *Silva V. Kindersley* 18 N.L.R 85.

The plaintiff has claimed Rs. 50,000/- for the items of furniture. All furniture belonged to his father except the beds and almirahs. The

evidence clearly indicate that the plaintiff was residing in the said house and therefore there is no doubt that there was household items, furniture , clothes books, and other items belonging to the plaintiff in the said house at the time of demolition. Further one cannot expect a person to keep all the receipts for such items in his possession. And the evidence given by the plaintiff that he lost whatever documents he had when the house was demolished could be believed. Under the circumstances the amount claimed by the plaintiff cannot be said to be excessive. I see no reason to interfere with the decision of the learned trial Judge in awarding Rs.100,000/- for the loss of movables belonging to the plaintiff.

The other cause of action is based on the ejection of the plaintiff from the premises except under the due process of law and for breach of the alleged contract.

The learned trial Judge has awarded Rs.300,000/- as damages to the plaintiff under the said cause of action. It is clear the learned trial judge has awarded a round sum as damages after taking into all the circumstances of this case. As a result of the act of the defendant, the plaintiff was left without a place to reside without any notice at all. The plaintiff had been taken by surprise by the act of the defendant and had been thrown on to the road and he had lost all his personal belongings and the furniture and the other household items. The evidence clearly establish that there had been some discussion between the defendant (P10,P11)and the plaintiff and that the defendant had offered to sell the plaintiff a portion of the said land for a lesser price. It is clearly seen that the defendant wanted to get possession of the part of the land the plaintiff was occupying and was interested in seeing the plaintiff leave the said house and land he was occupying. The evidence led in this case clearly establish that the defendant had thereafter decided to demolish the house the plaintiff was occupying and get vacant possession of the

said land. The defendant had therefore without resorting to legal action unlawfully demolished the said house in the absence of the plaintiff in breach of the contract between them. The conduct of the defendant-appellant is very high handed and cannot be condoned under any circumstances. But the plaintiff could have led evidence to prove that as a result of him being thrown on to the road he had to reside temporarily at a hotel or any other place until he found another place on rent and that he bought new clothes, books, new furniture and other household items, that he had to rent out another place on a higher monthly rent etc. But he has failed to lead such evidence to substantiate his claim. Under these circumstances the court can only give a general equitable assessment. The learned trial Judge had taken all the circumstances into consideration and awarded an arbitrary sum in this case. Therefore taking into all the circumstances in this case I would restrict the damages under this cause of action to Rs.200,000/-.

I would accordingly vary the decree entered in the plaintiff's favour by restricting the damages to Rs.300,000/-. The plaintiff is entitled to his costs at the lower court below.

The appeal is dismissed without costs.

Decree varied.

JUDGE OF THE COURT OF APPEAL