

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

Danasuriyalage Vinitha Rupasinghe
Wewella
Labbala

Plaintiff

Vs.

CA 154/99 (F)

D.C. Kuliypitiya Case No.
10008/L

1. Semgodan Arumugam,
No. 126, Main Street,
Kurunegala Road,
Giriulla.
(Deceased)

1A. Kidarame Pathirannehelage
Karunawathie

1B. Ashokan Arumugam (minor)

1C. Kidarame Pathirannehelage
Karunawathie
(Guardian-ad-litem of 1B Defendant)

All of No. 126, Main Street,
Kurunegala Road,
Giriulla.

2. Kidarame Pathirannehelage
Karunawathie
No. 126, Main Street,
Kurunegala Road,
Giriulla.

3. Kuttia Pille Balasubramaniam,
No. 106, 1/1, 1st Cross Street,
Colombo 11.

Defendants

AND NOW BETWEEN

CA 154/99 (F)

**D.C. Kuliyaipitiya Case No.
10008/L**

1. Semgodan Arumugam,
No. 126, Main Street,
Kurunegala Road,
Giriulla.
(Deceased)

1A. Kidarame Pathirannehelage
Karunawathie

1B. Ashokan Arumugam (minor)
(Deceased)

1Ba. Thubulle Lekamlage Resika Jeewanthi
Sumanaratne,

1Bb. Savindu Shehan Pathirana

1Bc. Nayani Amasha Pathirana

1Bd. Thubulle Lekamlage Resika Jeewanthi
Sumanaratne,

(Guardian-ad-litem of 1Bb & 1Bc
Substituted Defendant Appellants)

All of No. 126, Main Street,
Kurunegala Road,
Giriulla.

2. Kidarame Pathirannehelage
Karunawathie
No. 126, Main Street,
Kurunegala Road,
Giriulla.

Defendant - Appellants

Vs.

Danasuriyalage Vinita Rupasinghe
Wewella
Labbala

Plaintiff – Respondent

Kuttiya Pille Balasubramaniam,
No. 106, 1/1, 1st Cross Street,
Colombo 11.

3rd Defendant – Respondent

BEFORE: M.M.A. GAFFOOR J

S. DEVIKA DE LIVERA TENNEKOON J

COUNSEL:

**M. C. Jayaratne with M. D. J. Bandara for the
1A, 1Ba, 1Bd & 2nd Defendant – Appellants**

**J. C. Boange with S. Gurugaloda for the
Plaintiff – Respondent**

ARGUED ON:

03.04.2017

WRITTEN SUBMISSIONS – 1A, 1Ba, 1Bd & 2nd Defendant –
Appellants – 06.07.2017

Plaintiff – Respondents – 06.07.2017

DECIDED ON: 28.09.2017

S. DEVIKA DE LIVERA TENNEKOON J

The Plaintiff – Respondent (hereinafter referred to as the Plaintiff) instituted action in the District Court of Kuliyaipitiya by Plaint dated 11.01.199 against the 1st – 3rd Defendants for *inter alia*;

- a) A declaration that the Plaintiff is the owner of the land described in the Schedule to the Plaint,
- b) For an order ejecting the 1st and 2nd Defendants from the said premises.

The 1st and 2nd Defendants above named filed answer dated 1993.05.11 praying for *inter alia* a dismissal of the Plaint. They contented *inter alia* that the premises in question is one that is envisaged under the provisions of the Rent Act No. 07 or 1972 and as such the Plaintiff was not entitled to proceed with the action. Further, the 1st and 2nd Defendants averred that they had possessed the premises under a Tenancy and as such claimed Tenancy Rights and sought a dismissal of the Plaint.

Trial commenced on 16.06.1994 and the jurisdiction of Court and the Plaintiff's title was recorded as admissions. Issue Nos. 1 – 4 were raised on behalf of the Plaintiff, Issue Nos. 5- 13 were raised on behalf of the Appellants.

Under Section 150 of the Civil Procedure Code the Defendant commenced trial and documents marked 2V1 – 2V14 were marked. The Plaintiff led evidence thereafter marked documents P1 – P3 and closed the case.

The learned District Judge delivered judgment dated 28.01.1999 in favour of the Plaintiff. Being aggrieved by the said judgment the 1st & 2nd Defendants preferred the instant appeal.

The main issue to be determined by this Court is whether the 1st & 2nd Defendants have established tenancy rights to the premises in suit.

The position of the 1st & 2nd Defendants is that they came to possess the premises in suit in 1979 under one R. A. Wijesinghe as a tenant paying Rs. 125/- a month. Thereafter as the said R. A. Wijesinghe wanted a lump sum of two years rent payment a lease agreement bearing No. 5676 dated 07.11.1982 marked as 2V2 was entered into with the 1st Defendant and the said R. A. Wijesinghe for a period of two years for a sum of Rs. 3,000/-.

As correctly noted by the learned District Court Judge the matter in issue is whether the tenant can occupy the premises in suit after the expiration of the lease agreement marked 2V2.

The 1st & 2nd Defendants argue that the premises in suit is one which falls under the purview of the Rent Act. For this purpose it was necessary to establish that the 1st & 2nd Defendants occupied the said premises as tenants. The 1st & 2nd Defendants contend that after the expiration of the lease agreement marked as 2V2 and after 1984, rent was paid to the 3rd Defendant. After the 1st & 2nd Defendants

became aware that the present owner was the Plaintiff they had attempted to pay her rent but however, the Plaintiff had rejected same.

As duly noted by the learned District Court Judge the 1st & 2nd Defendants have failed to produce any documentation to the effect that they have paid rent to the 3rd Defendant or any other person after the expiration of lease agreement bearing No. 5676 dated 07.11.1982 marked as 2V2. As such the 1st & 2nd Defendants have failed to establish that they have continued to occupy the premises in suit as a tenant. Therefore the provisions of the Rent Act do not apply to the instant case.

The 1st & 2nd Defendant relies on the cases of Telenis Vs. Gunaratne 47 NLR 433 in which it was held that even after the expiration of a lease agreement a tenant can occupy the premises as a tenant. However, the said case must be distinguished from the instant application on the facts.

In the circumstances mentioned above I see no reason to disturb the findings of the learned District Judge dated 28.01.1999. Therefore this Appeal is dismissed with costs set at Rs. 10,000/-.

Appeal Dismissed.

Judge of the Court of Appeal

M.M.A. GAFFOOR J

I Agree.

Judge of the Court of Appeal