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

L.N.D de Silva,
121/1,Jambugasmulla
Mawatha,Nugegoda.

Plaintiff- Appellant

C.A.No.74/96 (F)
D.C.Colombo No.7855/RE

C.H.Thomas,
AssessmentNo.91,(Postal
No.60/2),Kandy, Kiribathgoda.

Defendant/Respondent

Before : M.M.A.Gaffoor,J. and
S.Devika de L.Tennekoon,J.

Counsel : Harsha Soza P.C with Anurddha
Dharmaratne for the Plaintiff-Appellant
Rohan Sahabandu P.C. for the Defendant-Respondent

Written submissions filed on : Plaintiff – Appellant on 12/03/2012

: Defendant-Respondent on 06.07.2017

Decided on : 11.10.2017

M.M.A.Gaffoor,J.

This appeal arises from an order given by the District Judge of Colombo case No. D.C. 7855/RE. The matters urged in the original plaint was that by the act of the tenant the condition of the premises had deteriorated. Both parties had made their oral submissions and tendered written submissions.

At the trial both parties admitted that the premises in suit are business premises. Plaintiff raised issues Nos.1st, 2nd and 13th to 16th and the Defendant raised issues Nos.3rd to 12th. Plaintiff gave evidence on behalf of the Plaintiff. It is submitted that Court has to judge the credibility and veracity of the evidence given by these witnesses.

Rent Act No.7 of 1992 and its amendments are applicable to the suit in question. This act is applicable to premises which include the buildings together with lands. It will be seen that all of the lease and rental transactions are governed by Roman Dutch Law which is known and common law subject to laws made by statutes. Prior to the enactment

are governed by Roman Dutch Law which is known and common law subject to laws made by statutes. Prior to the enactment of the present **Rent Act No.29 of 1948 and No. 9 of 1972** were in operation.

The main ground of this appeal by the defendant Appellant is that ejectment is sought on the basis of deterioration of the premises. This ground of ejectment has been incorporated into the Act by Section 22 (1) D and Section 22 (2) D of the Act.

It is trite law that if the condition of any premises has been deteriorated owing to the acts committed by the tenant neglect of default of the tenant it gives rises to the cause for the landlord to ejectment of the tenant on that ground. According to the Rent Act the burden of proof is on the Plaintiff landlord to satisfy Court by documentary and oral evidence regarding the cause of action, that is deterioration of the premises. This burden lies with the plaintiff. This has been decided in the case of *Vanderbona Vs. Justin Perera-1985 2 SLR 62.* It is in evidence that the tenant had constructed an additional part to this building with wooden planks. This matter had not been **contemplate** by the Plaintiff-Appellant. This construction cannot be construed as a permanent alteration. The ground that had been urged by the Plaintiff-Appellant that by constructing the section with wooden planks had deteriorated the condition of the premises.

Under the common law a tenant is entitled to carry out alteration which involve superficial or surface changes as opposed to permanent alterations.

In the case in point the deterioration that had been urged and the evidence to substantiate a position of deterioration the witnesses called by the Plaintiff – Appellant specifically state that deterioration had been caused to the building by fixing of racks and drilling wire nails. We observe that the changes are superficial or surface changes as opposed to permanent alterations which had caused deterioration to the existing premises.

This has been decided in the case of ***State Bank of India vs. Rajapaksha 2002 1SLR 138.*** The evidence adduced in this case by the plaintiff- appellant is that of Public Health Inspector and a Chartered Engineer. The evidence of the Public Health Inspector had been challenged in pages 88 to 90. The Public Health Inspector is a person without technical experience. He had visited this place with a Technical Officer but this Technical Officer had not been called to give evidence. According to the evidence of the Public Health Inspector what he had done was 'held the tapes for the Technical Office'. Furthermore, the Kelaniya Pradeshiya Sabha had not taken any action as regard to alterations made to this existing building.

The witness for the Plaintiff-Appellant had not tendered the approved plan and therefore was not in a position to prove any new construction to the property in question. It should be noted that the matter urged is not alteration but deterioration of the premises. The Charted Structural Engineer was called for the plaintiff had tendered a report 7A. This report does not specifically refer to the building as an unauthorized structure.

Further, the engineer who was called for the plaintiff has tendered a report 7A states as follows " In this report, the only report as regard deterioration is that fixing of racks and drilling of wire nails".

The question as regard to the fire that was caused in 1982 and the removal of the toilet and the stair case had not been dealt in the engineer's report. Therefore, the evidence called by the plaintiff-appellant cannot be considered as expert evidence on the matter in question.

It will be further seen the structural alteration envisages by the legislature by bringing an amendment to Section and new Subsection (1E) may be considered at this juncture, the amending Act of 1992 Section 22 IE stipulates a ground for ejectment as structural alterations done to the main building. Regarding this section 1 to C making alteration does not refer to a situation of deterioration. But it is only an another limit for grounds of ejectment.

The main issues in this appeal are not questions of law but questions **of** fact. It will be seen that a plethora of authorities coming from ***Fradd Vs Brown 22 NLR 282 to Wicklkramasinghe Vs Dedolina*** 1996 2 SLR 95 underline the principle that Court of Appeal is to reluctant to interfere with the observations of the original court where the original court had the priceless advantage of observing the demeanour and then facts brought before him. It is on a very rare occasions that the Court the Court of Appeal will venture in to a question of fact which deals with a decision court of first instance.

In ***64 NLR 217 HNG Fernando J*** had enlightened this position and had enumerated certain guidelines where a Court of Appeal will interfere with the findings of an original court (1) where inadmissible evidence had been considered as relevant evidence. (2) Where the original court had come to conclusion of facts unsupported by legal evidence. While concluding it is pertinent to quote from the judgment of the District Judge where she had specifically stated that page 194 (quote the Sinhala passage)

"කෙසේ වෙතත් පැමිණිලිකරුගේ මෙම සාක්ෂි සහ ඇය වෙනුවෙන් කැඳවා ඇති සාක්ෂිවලින්ද පැහැදිලි වන්නේ මෙම නිවස පරණ නිවසක් වන අතර, එක්තරා කාලයක පාර පළල් කිරීම නිසාත්, ගින්නක් නිසාත්, වෙනස්කම් සිදුවී ඇති බවයි. කෙසේ වෙතත් මෙසේ පිරිහීම සිදුවී යයි කියන්නේ කුමන හේතුවක් නිසාද කාර්මික නිලධාරියාගෙන් ප්‍රශ්න කල විට දී ඔහු කියා

සිටියේ, රාක්ක ගැසීම නිසා, වූ පරිහානියකි. මෙම පරිහානිය මෙවැනි නඩුවක විත්තිකරුවෙක් ඉවත් කිරීමට තරම් ප්‍රමාණවත් පරිහානියක් යැයි පිළිබඳ සැලකිය නොහැකිය. ”

In the circumstance taking into consideration cumulative fact and the laws, mention in this appeal, we see no reasons to interfere with the judgment of the Learned District Judge.

Accordingly, this appeal is dismissed with costs. **fixed at Rs.10,000/-.**

JUDGE OF THE COURT OF APPEAL

S.Devika de L.Tennekoon,J.

I agree.

JUDGE OF THE COURT OF APPEAL