

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

A.Iddagoda of Kapila Bakery,

No.13, Averiwatta Road,

Wattala.

Defendant-Appellant

Case No. C.A. 366/97 (F)

D.C. Negombo Case No. 1447/RE

Vs.

1. J.P.J.Annesley Perera (Dead)
1. (a) S.A.P.Padma Perera
(b) J.P.M.Senaka Perera
(c) J.P.Suranga Perera
(d) J.P.Lanka Perera

All of No. 36/15, Averiwatta Road,

Wattala

Plaintiff - Respondents

Before: M.M.A. Gaffoor J.

Janak De Silva J.

Counsel: P.L. Gunawardena with J.D. Douglas for Defendant-Appellant

Dr. Sunil Cooray with Sudarshini Cooray for Plaintiff-Respondents

Written Submissions tendered on:

Defendant-Appellant on 30th May 2012 and 12th December 2017

Plaintiff-Respondents on 6th February 2012

Argued on: 7th November 2017

Decided on: 5th April 2018

Janak De Silva J.

The 1st Plaintiff-Respondent (Plaintiff) filed action against the Defendant-Respondent (Defendant) seeking eviction from premises no. 13 Avarihena Road, Wattala, arrears of rent and damages. The Plaintiff claimed that the Defendant had failed and neglected to pay the rent due after 1st September 1981. The Defendant denied that there were any arrears of rent. She further stated that the standard rent for the premises was Rs. 66/= whereas the rent charged by the Plaintiff was Rs. 160/=. The Defendant cross-claimed for the excess rent paid over and above the standard rent.

At the trial parties admitted that the premises in suit was a business place, that the Defendant became the tenant of the Plaintiff on 01.01.1981 and that the agreed rent between the parties was Rs. 160/= per month. The notice to quit sent on behalf of the Plaintiff dated 24.08.1987 was marked as පැ. 6 at the trial and the Defendant during cross examination admitted that she received it (Appeal Brief page 141). After trial, the learned Additional District Judge of Negombo by her judgement, dated 31st January 1997 delivered in open court on 24th February 1997, entered judgement as prayed for in the plaint and dismissed the cross claim of the Defendant. Hence this appeal by the Defendant.

One important question that arose for determination by the learned trial judge was whether there were any arrears of rent after 1st September 1981. The Plaintiff claimed that rent was not paid after 1st September 1981 whereas the Defendant claimed that it was paid but that the Plaintiff had failed to issue any receipts. It was word against word. The learned Additional District Judge accepted the evidence of the Plaintiff based on the consistency of his evidence. The overall consistency of evidence is a test of credit worthiness. Consistency is not just limited to consistency inter se but also consistency with what is agreed and clearly shown to have occurred.¹ The overall consistency of evidence in testing the creditworthiness is also relevant in

¹ *Attorney General v. Sandanam Pitchi Mary Theresa* [(2011) 2 Sri.L.R. 292]

civil proceedings. I see no reason to disagree with this finding of fact made by the learned Additional District Judge.

More so in light of some of the documentary evidence produced at the trial. The Plaintiff had sometime in 1987 complained to the Wattala Mabile Rent Board about the dispute with the Defendant. By letters dated 24.06.1987 (ඔඳ. 2), 1987.07.13 (ඔඳ. 3) and 1987.08.07 (ඔඳ. 4) the Defendant was summoned for a discussion at the Wattala Mabile Rent Board. The Defendant only admitted the receipt of ඔඳ. 2. However ඔඳ. 3 and ඔඳ. 4 were lead in evidence at the close of the case for the Plaintiff without any objections. If no objection is taken, when at the close of a case documents are read in evidence, they are evidence for all purposes of the law. This is the *cursus curiae* of the original civil courts.² In response to these letters it appears that the Defendant sent a letter dated 1987.07.19 (ඔඳ. 5) to the Authorized Officer, Wattala Mabile Rent Board. There she takes up the position that it is not proper for her to enter into any agreement with the Plaintiff due to firstly the failure on the part of the Plaintiff to prove that he was the owner of the premises in dispute and secondly because she is unaware about him. Nowhere in ඔඳ. 5 does the Defendant take up the position that she had paid rent after 1st September 1981. That was the logical position to take up if the rent had in fact been paid as claimed by the Defendant.

Furthermore, the Defendant denied that the Plaintiff had ever issued her any receipts for the rent paid by her. However, the learned Counsel for the Plaintiff drew her attention to the list of witnesses and documents filed on her behalf dated 24.04.1989 where under the list of documents item no. 3 rent receipts issued by the Plaintiff to her for January 1981 and April 1981 are listed.

² Samarakoon C.J. in *Sri Lanka Ports Authority and another v. Jugolinija-Boat East* [(1981) 1 Sri.L.R. 18 at 24]

The learned Additional District judge has held that the Defendant had failed to establish that the standard rent for the premises in suit was Rs. 66/= per month as claimed by her. In any event, the learned Additional District judge has stated that the rent of Rs. 160/= per month was paid as rent by agreement between the parties and accordingly it is immaterial whether the standard rent was Rs. 66/= per month as claimed by the Defendant.

For the foregoing reasons I see no reason to interfere with the judgement of the learned Additional District Judge of Negombo dated 31st January 1997 delivered in open court on 24th February 1997.

The appeal is dismissed with costs.

Judge of the Court of Appeal

M.M.A. Gaffoor J.

I agree.

Judge of the Court of Appeal