

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

U.G. Simon (deceased),
U.G. Ranjith,
Ambagamuwa Road,
Gampola.
(Substituted Plaintiff-Appellant)

CA CASE NO: CA/895/1999/F
DC GAMPOLA CASE NO: 2240/L

Vs.

1. Gamini Amarathunga,
Vingulwatta,
Gampola.
 2. Urban Council (discharged)
Gampola.
- Defendant-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Senura Abeywardena for the Appellant.
Nilantha Kumaraage for the Respondent.

Decided on: 12.10.2018

Samayawardhena, J.

The plaintiff filed this action on 03.11.1992 against the two defendants in the District Court of Gampola seeking declaration of title to the building standing on the land described in the schedule to the plaint, ejectment of the 1st defendant therefrom and damages. The defendants filed answers seeking dismissal of the plaintiff's action. The 2nd defendant, Urban Council of Gampola, was discharged before the trial by order dated 18.06.1996. After trial, the learned District Judge dismissed the plaintiff's action. Hence this appeal by the plaintiff.

According to paragraph 2 of the plaint, the premises in suit belong to the Urban Council and the Urban Council has given the premises on lease to the plaintiff. This Lease Agreement has been marked at the trial as P10 and as per the said Agreement, the premises, consisting of a parcel of land with a boutique standing thereon, have been rented out by the Urban Council to the plaintiff for a period of one year from 01.01.1966.

According to paragraphs 9 and 10 of the plaint, when these premises were in occupation of one Jayasinghe, who the plaintiff says was his business partner, the 1st defendant forcibly entered into possession of the premises on or around 12.12.1984 by evicting Jayasinghe with the full patronage and blessings of the Urban Council. Jayasinghe was not called as a witness and this alleged dispossession has taken place nearly 8 years before filing of the action.

Then in paragraph 12 of the plaint the plaintiff says that the Urban Council has thereafter leased out the premises to the 1st defendant.

According to the plaint, the principal grievance of the plaintiff is against the Urban Council. However, as I stated earlier, the Urban Council has been discharged from the case, as in terms of section 220(2) of the Urban Councils Ordinance, the action has not been filed against the Urban Council within 6 months from the date of accrual of the cause of action. There is no appeal against that order.

The plaintiff shall conduct the trial as he has pleaded in the plaint and he cannot at the trial take up a materially different position to what he has taken up in the plaint—Explanation 2 of section 150 of the Civil Procedure Code.

It is my considered view that the plaintiff cannot maintain this action the way he has pleaded, without the Urban Council being a party to the action.

His main relief to seek a declaration that he is the owner of the building cannot obviously be granted as according to the Lease Agreement P10 the Urban Council has leased out the land and the building standing thereon to the plaintiff, and as per P1 what the plaintiff has been permitted is to repair the building without doing any structural alterations.

No Judgment against the 1st defendant can be entered as the 1st defendant has come into possession of the premises admittedly with the permission of the Urban Council, which is the owner of the premises.

Appeal is dismissed with costs.

Judge of the Court of Appeal