IN THE COURT OF APPEAL

OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

C. A. 787 / 91 (F)

D. C. Colombo- 7428/RE

Mohamed Mohidun
Mohamed Zaffer of
No. 47, Messenger Street,
Colombo 12

PLAINTIFF

VS

V. T. Wickremasinghe
No. 431, Grandpass Road,
Colombo 14

DEFENDANT

AND BETWEEN

Mohamed Mohidun
Mohamed Zaffer of
No. 47, Messenger Street,
Colombo 12 ***(Deceased)***

PLAINTIFF-APPELLANT

Mohamed Ashrak
No. 47, Messenger Street,
Colombo 12

SUBSTITUTED PLAINTIFF-APPELLANT

VS

V. T. Wickremasinghe
No. 431, Grandpass Road,
Colombo 14 ***(Deceased)***

DEFENDANT-RESPONDENT

Noel Lasantha
Wickremasinghe
No. 431, Grandpass Road,
Colombo 14

SUBSTITUTED DEFENDANT-RESPONDENT

BEFORE : **M. M. A. GAFFOOR, J.**

COUNSEL : Ranjan Suwandaratne P.C. with K. K. Farooq for the Substituted Plaintiff-Appellant

Rohan Sahabandu, P.C. for the Substituted Defendant-Respondent

WRITTEN SUBMISSIONS TENDERED ON : 31.07.2018 (by the Substituted Plaintiff-Appellant)

15.08.2018 (by the Substituted Defendant-Respondent)

DECIDED ON : **10.12.2018**

****

M. M. A. GAFFOOR, J.

The original Plaintiff-Appellant on or around 26.01.1990 instituted an action bearing Case No. 7428/RE in the District Court of Colombo against the original Defendant-Respondent (deceased) seeking inter alia to eject the Defendant-Respondent, his sub tenant and all those persons holding under him from the premises described in the schedule to the Plaint which is premises No. 431, Grandpass Road, Colombo 14, to recover arrears of rental from the period of April, 1984 till 30.09.1989 and further damages at Rs.25000/- per month from 01.10.1989 till the Plaintiff-Appellant is placed in possession of the property in suit.

According to the said Plaint, the Plaintiff-Appellant instituted the above action on three grounds, namely, arrears of rent, subletting and wanton destruction or unlawful deterioration of premises.

The Defendant-Respondent in his answer dated 25.09.1990 (*page 62 of the appeal brief*), stated that the said premises was initially given to him by S. L. M. Hassen and he paid rent to the said S. L. M. Hassen up to 31.12.1985.

At commencement of the trial, the original Plaintiff-Appellant raised 7 issues and Attorney for the Defendant-Respondent objected to issue Nos. 2,3 and 4 but the learned Trial Judge by his order, refused those objections raised by the Counsel for the Defendant-Respondent (*vide page 73-78 of the appeal brief*). Thereafter on 18.07.1991 the Substituted Defendant-Respondent raised 4 issues in support of his contention (*vide page 83 and 84 of the appeal brief*).

After trial, the learned District Judge dismissed the Plaintiff's action with costs. Being aggrieved by the said judgment, the Plaintiff-Appellant preferred this appeal to set aside the judgment and grant relief according to his Plaint.

In the District Court, the learned District Judge has held that after demise of the original owner of the premises which described in the schedule to the Plaint, the Plaintiff-Appellant had become the owner of it. Therefore, the Plaintiff-Appellant informed the Defendant-Respondent to attorn to him from 01.07.1986. Thus, the learned District Judge correctly held that the contract of tenancy (and the attornment) between the Appellant and the Respondent commenced from that date (01.07.1986). Therefore, the cause of action based on arrears of rent from April, 1984, could not stand. Further, the authorized rent for the premises was Rs.67.08 per month, which was subsequently increased to Rs.192.89. The Defendant-Respondent had deposited a sum of Rs.2158.21 from July 1986 till institution of the action with the authorized officer of the Municipal Council, since the Plaintiff-Appellant refused to accept that sum by way of rent.

Furthermore, the Defendant-Respondent had paid rates to the Local Authority in a sum of Rs.3754/- from the commencement of the contract with the Plaintiff-Appellant (*vide "V14" to "V32"*). Accordingly, it is clear that the Defendant-Respondent was not in arrears at the time the action was instituted.

Section 21 of the Rent Act, No. 07 of 1972 covers the same instances where the landlord either refuses or avoids the receipt of the rents from the tenant with designed purpose of finding a fault on the part of the tenant to terminate the tenancy agreement.

Section 21 reads as follows:

1. *The tenant of any premises may pay the rent of the premises to the authorized person instead of the landlord.*

2. *Where any payment of any rent of any premises is made on any day in accordance with the provisions of subsection (1), it shall be deemed to be a payment received on that day by the landlord of the premises from the tenant thereof.*

3. *Where the rent of any premises is paid to the authorized person, the authorized person shall issue to the tenant of the premises a receipt in acknowledgment of such payment, and shall transmit the amount of such payment to the landlord of the premises. It shall be the duty of such landlord to issue to the authorized person a receipt in acknowledgment of the amount so transmitted to him.*

4. *In this section, " authorized person ", with reference to any premises, means the Mayor, or Chairman of the local authority within whose administrative limits the premises are situated or the person authorized in writing by such Mayor or Chairman to receive rents paid under this section, or where the Minister so determines, the board of the area within which the premises are situated.*

(Vide: SAMARAWEERA vs. RANASINGHE, 59 NLR 395, DE SILVA vs. ABEYRATNE, 56 NLR 574, SUBRAMANIAM vs. PATHMANATHAN (1984) 2 SLR 252 and VIOLET PERERA vs. ASILIN NONA (1996) 1 SLR 1)

Therefore, I am of the view that there is no error in the finding of the learned District Judge on the first cause of action.

Further, the learned District Judge has, on the evidence placed before him, concluded that one Sugath, to whom it was alleged that the Defendant-Respondent sublet the premises, was only a Manager of the business run by the Defendant-Respondent and he was paid a salary of Rs.1000/- per month. In any event, the evidence led before the learned District Judge by the Plaintiff-Appellant by his evidence failed to establish the two main ingredients necessary to prove sub-letting, namely, exclusive possession and the payment of rent by the sub-tenant and to the tenant. On that basis, it is my view that the learned District Judge had correctly dismissed the Plaintiff-Appellant's second cause of action.

With regard to the third cause of action of deterioration of premises, apart from the Plaintiff-Appellant's evidence certain photographs have been produced in support (marked as "P9' to "P14"). However, the Defendant-

Respondent in his evidence stated that the premises was in such a state dis-repair, he had requested the Plaintiff-Appellant to attend to the same; and since the Plaintiff-Appellant failed to do so, he had with approval of the Urban Development Authority (U.D.A) attended to necessary repairs without any structural alteration. If there were structural alterations the Local authorities should not have permitted the repairs to be attended to. Further, if there were structural alterations, the Plaintiff-Appellant could have pursued the matter with the U.D.A. Therefore, I am of the view that, the learned District Judge had handled the case in a careful manner and found that the Defendant-Respondent has in fact improved the premises and caused no deterioration or destruction thereof and dismissed the claim of the Plaintiff-Appellant on the third cause of action.

In the circumstances enumerated above, I see no reason to interfere with the judgment of the learned District Judge dated 03.12.1991.

Therefore, I dismiss the appeal without Costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL