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

C. A 262/96 (F)

D. C. Mount Lavinia, 18/93/RE

B. Munasinghe
No. 21, Parakrama Mawatha,
Kohuwala, Nugegoda

PLAINTIFF

VS

K. A. Karolis Appuhamy
No. 59/7, Mirihana Road,
Mirihana, Nugegoda ***(Deceased)***

K. P. Lucihamy
No. 59/7, Mirihana Road,
Mirihana, Nugegoda

SUBSTITUTED-DEFENDANT

AND

B. Munasinghe
No. 21, Parakrama Mawatha,
Kohuwala, Nugegoda ***(Deceased)***

PLAINTIFF-APPELLANT

1a. Handunge Don Arthur
Clarence Munasinghe
No. 21, Parakrama Mawatha,
Kohuwala, Nugegoda

1b. Roshan Chethiya Munasinghe,
No. 21, Parakrama Mawatha,
Kohuwala, Nugegoda

1c. Shiran Pradeep Munasinghr
No. 57/A, Mirihana Road,
Mirihana, Nugegoda

SUBSTITUTED PLAINTIFF-APPELLANT

VS

K. A. Karolis Appuhamy
No. 59/7, Mirihana Road,
Mirihana, Nugegoda ***(Deceased)***

K. P. Lucihamy
No. 59/7, Mirihana Road,
Mirihana, Nugegoda

SUBSTITUTED DEFENDANT

Keragala Arachchige Lilian
No. 59/7, Mirihana Road,
Mirihana, Nugegoda

SUBSTITUTED DEFENDANT-RESPONDENT

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

COUNSEL : Gamini Marapana PC with Navin Marapana and Janani Peiris for the Substitute Plaintiff-Appellant

Ranjan Suwandaratne PC with Sunari Tennakoon for the Substituted Defendant Respondent

WRITTEN SUBMISSIONS TENDERED ON : 30.08.2018 (by both parties)

DECIDED ON : **12.12.2018**

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M. M. A GAFFOOR, J

This is an appeal against the judgment of the learned District Judge of Mount Lavinia in respect of evict the tenant (Rent Action) case bearing Number 18/83/RE.

The Plaintiff – Appellant (hereinafter referred to as the Appellant) instituted this action to evict the Original Defendant, Who was the tenant from the rented premises on the basis of sub – letting part of the premises bearing Assessment No. 59/7A to one K. Shelton.

The Appellant stated in his plaint that the Original Defendant became the tenant under the Appellants premises bearing Assessment No. 59/7 and is governed by the Provisions of the Rent Act No. 7 of 1972. He further stated that the Original Defendant has sublet the said premises without his consent, to said K. Shelton.

The Appellant's position is that before instituting the District Court action against the Defendant, he sent notice to quit dated 27.11.1992 (marked as 'P7'), terminating the tenancy of the Original Defendant.

The Appellant further stated in his Plaint that from 01.01.1993 the Defendant was in wrong and unlawful occupation of the said premises causing loss and damages to the Appellant at 200/- per mensem.

Therefore, The Appellant prayed in his Plaint to eject the Original Defendant and all those holding under the Original Defendant from the premises bearing Assessment No. 59/7 and 59/7A.

During the pendency of the action the Original Defendant died, and his wife was named as the substituted Defendant.

On 17.01.1994 the Defendant-Respondent filed her answer stating inter alia that said K. Shelton is her son who is residing with his parents and he hasn't pay any rent to the Original Defendant. She further stated that the Appellant has not mentioned in the plaint the period from which the premises have been sublet to the said Shelton and the plaint does not disclose a cause of action.

At the Trial both parties admitted,

- the premises in question is subject to the provisions of the Rent Act.
- the receipt of the quit notice is admitted.
- the tenancy between the Appellant and the deceased Original Defendant is admitted.
- K. Shelton referred to in the plaint is the son of the deceased Original Defendant.

At the end of the trial the learned District Judge delivered his judgment dated 10.06.1996 in favour of the Defendant-Respondent.

Being aggrieved by the said judgment, the Appellant appealed to this Court seeking,

- To set aside the judgment dated 10.06.1996,
- Enter judgment in favour of the Appellant as prayed in the plaint,

In this appeal, the Appellant's main argument was that even, the Appellant had prima facie proved, the learned District Judge entered judgment against him on the basis subletting was not proved. Therefore, he further submitted that he proved the fact that the questioned house was subletted within the meaning of Section 10(1) of the Rent Act No 7 of 1972.

Section 10(1) of the Rent Act No 7 of 1972 reads as follows:

> *"For the purposes of this Act, any part of any premises shall be deemed to have been let or sublet to any person if such person is in occupation of such premises or any part thereof in consideration of the payment of rent and the provisions of this Act shall not apply to such letting or subletting unless the landlord has consented in writing to the letting or subletting of such premises."*

The Appellant's position is that the questioned house was divided into two distinct sections bearing Assessment No.59/7 and 59/7 A.

> **"1986 සැප්තැම්බර් මාසයේ අංක 59/7A, කේ ෂෙල්ටන් පදිංචි කොටස කියා වෙනමම දක්වා, වෙනමම අංක කර තිබෙනවා. එය කලින් 59/7 ම කොටසක්. එම කොටස වෙන් කරලා**

පදිංචිකරු කේ.ශෙල්ටන් හැටියට පෙන්වා තිබෙනවා."
(Vide page 39 of the appeal brief)

The Municipal document 'P1' which was proved at the trial clearly depicts a plan of the premises in suit. At the trial the municipal officer Samarakoon stated as follows, (*At page 39*)

The document marked as P1 was allowed to produce under subject to prove.

At the trial the Substituted-Defendant-Respondent stated in her evidence as,

ප්‍ර: පැමිණිල්ලෙන් කියන්නේ ෂෙල්ටන් වෙන් කර ගෙන තාත්තා හදා දුන්න කුස්සියත් සමඟ තමයි ඉන්නේ කියා?

උ: ඔව්. ෂෙල්ටන් වෙනම සිටියා බැන්දාට පස්සේ.

<u>අධිකරණයෙන්</u>:-

ප්‍ර: වෙනම කුස්සියක් තිබෙනවාද ෂෙල්ටන්ට?

උ: කුස්සියක් නෑ. තහඩු ගහලා වෙන් කර ගෙන තිබෙනවා.

And also the 5th Admission on record states as

"මෙම අවස්ථාවේ දී මෙම නිවසේ කොටසක් අංක 59/7 ඒ වශයෙන් 1990 සිට වෙනම ඒකකයක් වශයෙන් තක්සේරු කර ඇති බව පමණක් පිළිගනී. එම පිළිගැනීම 5 වන පිළිගැනීම වශයෙන් සටහන් කරමි." (*At page 46*)

In this case, the Respondent's position was that more giving an additional Assessment Number to an existing premises does not itself convert such premises into two separate houses and the Municipal council even if the

same family members are living in one house and one of the family members is married and living in a part of the same house under his own parents still for assessment purposes Municipal Council can assign an additional number though the said premises is a part of the Original premises.

The Respondent further argued that, the most important element of sub letting is that the tenant should sublet an exclusive area of the premises and thereafter give exclusive control of such area to the sub tenant and also should recover rent in relation to such area.

The Respondent stand was that the Municipal officer Samarakoon never ever mentioned such payment of rent by Shelton to his own father and in the evidence of Respondent clearly explained that her son Shelton is living throughout in the said premises under her and her late husband (Original Defendant) had never accepted money from Shelton for his occupation together with his wife and the children.

And the Respondent further claimed that the Appellant has failed to identify and point out the exact area where the said Shelton and his family are in occupation.

In the case of ***Azhar vs. Fernando*** (76 NLR 118***)*** it was held that,

> *"Where, in an action instituted by a landlord to eject his tenant on the ground that the tenant has sublet a portion of the rented premises, the landlord's evidence is sufficient to establish a prima facie case of subletting, the burden is then on the tenant to furnish evidence in rebuttal."*

Considering the evidence of the Appellant it is evident that she was not aware about the sub-letting the questioned house by the Original Defendant.

> " කරෝලිස් අප්පුහාමි කියන්නේ ෂෙල්ටන් ඔහුගේ පුතෙක් බව. ඔහු කරෝලිස් අප්පුහාමිට කුලියක් ගෙව්වේ නැති කියායය. නමුත් නගර සභාවෙන් කිව්වා කුලියක් ගන්නවා කියා ". (Page 14)

ප්‍ර: තමාට කියන්න පුළුවන්ද තමා පැ.7 කියන දැන්වීම අනුව කියා තිබෙන්නේ කරෝලිස් අප්පුහාමි ෂෙල්ටන් කියා කෙනෙකුට මේ ගෙය අතුරු කුලියට දී තිබෙනවා කියා?

උ: ඒක තමයි මට නගර සභාවෙන් කිව්වේ.

ප්‍ර: ඒ හැර තමා පුද්ගලිකව දන්නේ නෑ කියන්න ෂෙල්ටන්ට කුලියට දී තිබෙනවා ද නැද්ද කියා?

උ: දන්නේ නෑ.

Furthermore, the Appellant conceded at page 52 that she decided to institute action only because there were new assessment number given in addition to the old number given to the main premises in question.

The evidence given by the Respondent made it clear that there is no basis at all for the Appellant to institute this action, and under these circumstances the learned District judge also correctly considered all matters led in evidence that there is no sub-letting by the Original Defendant to his son Shelton. Thus, the appellant's action cannot stand.

Considering all these issues, I see no reason to interfere with the judgment of the learned District judge.

Therefore appeal dismissed without Costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL