

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

Abdul Kafoor Mohamed Buhari. (Deceased),  
No. 161/12, Jampattah Street,  
Kotahena, Colombo 03.

**Plaintiff**

C.A.No. 811/2000(F)  
D.C. Colombo Case No. 17753/L

Vs.

Anthony Muththu Anthony Amma,  
No. 161/12, Jampattah Street,  
Kotahena, Colombo 03.

**Defendant.**

AND

Abdul Kafoor Mohamed Buhari. (Deceased)  
No. 161/12, Jampattah Street,  
Kotahena, Colombo 03.

**Plaintiff-Appellant**

Vs.

Anthony Muththu Anthony Amma,  
No. 161/12, Jampattah Street,  
Kotahena, Colombo 03.

**Defendant- Respondent.**

**NOW AND BETWEEN**

Binthi Ruwaiza,  
No. 161/12, Jampattah Street,  
Kotahena, Colombo 03.

**Substituted Plaintiff- Appellant.**

Vs.  
Anthony Muththu Anthony Amma,  
No. 161/12, Jampattah Street,  
Kotahena, Colombo 03.

**Defendant- Respondent.**

Before : E.A.G.R. Amarasekara, J

Counsel : Ravindra Anawaratne for the Plaintiff – Appellant.  
P. Peramunagama with Ranga Peris for the Defendant-  
Respondent.

Decided On : 14.12.2018.

**E.A.G.R. Amarasekara, J.**

This is an appeal made against the Judgment dated 25.09.2000, delivered by the learned District Judge of Colombo in Case No. 17753/L.

It is my considered view that the learned District Judge erred in dismissing the Plaintiff for the following reasons;

1. The Defendant Respondent (hereinafter sometimes referred to as the Defendant) came as a tenant of the Plaintiff in June 1984 to the property described in the Plaintiff. (vide the agreement marked P2 which was admitted by both the parties). Therefore, at that time, she was conceding that the title to the premises in issue was with the Plaintiff.
2. Though the learned District Judge has come to the conclusion that this action was not based on the lease agreement marked as P2, it is clear from the averments of the Plaintiff and issue no.2 that the position of the Plaintiff is that the Defendant is an overholding lessee.

3. The learned District Judge has answered the issue no.12, which was raised by the Defendant to get the protection of the Rent Act, No. 7 of 1972, as 'Not Proved'. As the learned District Judge has stated in his judgment, no evidence was led to prove that the relevant premises falls within the ambit of the said Act. On the other hand, while denying that the Plaintiff is the landlord and her occupation of the premises is based on the rights of her children (jus tertii) she cannot be allowed to claim the protection given by the Rent Act. She shall not be allowed to blow hot and cold simultaneously.
4. The Plaintiff was given a deed of disposition by the Commissioner of National Housing on 26.06.1995- (vide P1). It was marked without any objection whatsoever. No evidence was led by the defendant to show that the predecessors in purported title of the Defendant's children took any steps when this premises was vested with the Commissioner of National Housing.
5. It appears that there is a pending inquiry before the Commissioner with regard to the validity of the aforesaid deed of disposition (P1), for which inquiry the Plaintiff was not given proper notices. However, it is clear from the evidence led that there was no order invalidating the said deed up to the time of the trial- (vide the evidence led through the officers of the National Housing Authority). The learned District Judge had to adjudicate the rights of the parties as at the date of filing the Plaint. Therefore, even at the date of filing the Plaint as well as during the trial, the Plaintiff had paper title and the learned District Judge has found that

the Defendant had failed in proving the title of her children to the premises as mentioned below.

6. The learned District Judge has correctly found that there was no sufficient evidence to prove that the Defendant's children got title through the deed marked V4, since the Defendant failed in proving how S.H.M. Hussain, whose purported title seems to have been devolved upon the vendor of V4, got title to the premises. On the other hand, vendor in V4 had stated in V4 that her title derived through a last will of said S.H.M. Hussain but no evidence was led to prove that the said last will was proved in a Testamentary action filed in that regard.
7. Merely because there is a pending inquiry, one cannot decide P1, which was not objected as aforesaid, did not convey title to the plaintiff specially when the Defendant failed to prove title through V4. Till the deed P1 is invalidated by due process of law, it has to be considered as a valid deed.
8. The Defendant's children who, as per the Defendant's stance, have the title to the property were not made parties or have not come forward to state that they have the title to the land and the Defendant is in occupation with their leave and permission.
9. For the reasons given above there was evidence on balance of probability to prove that the Plaintiff had title to the subject matter on the date he filed the Plaint and said title was not invalidated during the trial.

Since the learned District Judge's conclusion is not supported by the evidential materials revealed in the case as elaborated above, this Court decides to set aside the said Judgment dated 25.09.2000 of the learned District Judge of Colombo.

Though the Plaintiff has claimed Rs.50000/- as compensation and Rs. 1000/- per month as damages till the possession is given back to him, he has not substantiated how he quantified the damages. As per the document marked P2, he has given the premises on rent for Rs.100/- per month. He has taken almost 9 years from the termination of lease agreement as per the document marked P2 to file an action. Therefore, he is entitled only to Rs.100/- per month as damages from a date two years prior to the date of filing the Plaint till he gets the quiet possession of the premises. Subject to that the Plaintiff is entitled to prayer 'a', 'b' and 'd' of the Plaint. He is entitled to damages under prayer 'c' only as mentioned above.

The appeal is allowed with costs.

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E.A.G.R. Amarasekara

Jude of the Court of Appeal.