

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

*In the matter of an application for substitution  
in place of the deceased Defendant-Respondent  
under Section 760A of the Civil Procedure Code*

Thangavelu Thangaraja,  
No. 445, Peradeniya Road, Kandy.

**C.A. 318/96 (F)**

**Plaintiff-Appellant**

**D.C.Kandy Case No. 2000/RE**

Vs.

1. Manisamy Admma,  
No.445 (Rear portion) Peradeniya Road,  
Kandy.

**Defendant-Respondent**

(Deceased)

NOW AND BETWEEN

Thangavelu Thangaraja,  
No. 445, Peradeniya Road, Kandy.

**Plaintiff-Appellant**

By his Attorney  
Sivakulasingham Sivaruban  
No.443, Sirimavo Bandaranayake  
Mawatha, Peradeniya Road,  
Kandy.

Vs.

1. Munisamy Gavaramma
2. Munisamy Janaki
3. Munisamy Sunderaraj,  
No. 115/9, Deiyannewela, Kandy
4. Munisamy Siddambaram
5. Munisamy Rajagopal
6. Munisamy Rajamma
7. Munisamy Balendran  
No. 444/1, Peradeniya Road, Kandy
8. Munisamy Balasaraswathie,  
No.166/66, Bogodawatta, Mulgampola,  
Kandy.

**Substituted Defendant-Respondents**

Before: **M. T. MOHAMMED LAFFAR, J. &  
K. K. A. V. SWARNADHIPATHI, J.**

Counsel: M. Nizam Kariapper, (PC) with M. I. M. Iyauallah  
For the Plaintiff-Appellant.

Shantha Karunadhara,  
For the 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Substituted-Defendant-Respondents.

Decided on: On written submissions

Delivered on: 14.12.2021

**K.K.A.V.SWARNADHIPATHI, J.**

**JUDGEMENT**

This Appeal emanates from the judgment in case No 2000/RE from Kandy District Court. Plaintiff-Appellant filed a rent and ejectment case against the Defendants. According to the Plaintiff, Meera Saibu Mohamed Thaha transferred allotment No. 2 in plan No. 1205 bearing assessment No. 445 by deed No. 4479 dated 24.08.1981 to Plaintiff. When Plaintiff bought the land, his predecessor had constructed a new building on the southern part of the land and had given on rent to Munisamy. There was no question about the tenant-landlord relationship between Meera Saibu Mohomad Thaha and Munisammy. Once Plaintiff bought the land, a letter was sent on 11.06.1985. demanding Munisamy to vacate the premises. As Munisammy passed away and the wife and children continued to occupy the premises without Plaintiff's permission, another quit notice was sent to the successors of Munisamy on 17.09.1985. The stand taken by the Appellant was that the wife and children of the said Munisamy are unlawful occupants. The respondent refused that they were unlawful occupiers but sought the relief under Rent Act.

Once the case came to the District Court, the trial proceeded on 28 issues. Witness was called, and the learned judge entered the judgment on 19.03.1996. In the judgment, the judge had stressed the importance of the time the building was built

According to the Rent Act, if the building were constructed after the 1st of January 1981, the Rent Act would not be applicable. The learned judge had discussed this issue and answered issue No. 16 in the affirmative. Even though issue No. 16 is somewhat different, and it is closer to the meaning of whether the premises were built in or after 1980.

Another shortcoming in the judgment is the analysis of Defendant's knowledge of the change of ownership. Plaintiff's case is that at the time of him becoming the owner, the tenant was the husband of Defendant. When pursuing P17 in the first cage, the tenant's name is Munisamy, and the owner's name is Thangawel Thangaraja. In P18 the Defendant had admitted that K. Munisammy was her husband.

The witness Anula Senadhipathi had given evidence regarding P17 as an official witness. By their silence on this matter, the Defendants had accepted that Munisamy mentioned in P17 is the same Munisamy who was the Plaintiff's tenant. Therefore the knowledge of ownership by

the tenant is admitted. The conclusion that the learned judge had rejected the Plaintiff was that Plaintiff had not established the owner and tenant relationship.

However, by P17, the knowledge of Munisammy was established. The present Defendant being the wife of Musnisammy, who walks into the shoes of Munisammy, cannot deny the fact that Plaintiff is the owner. If she rejects Plaintiff's ownership, she ceases to be Plaintiff's tenant and becomes an unlawful occupier. By P17, Munisamy had accepted Plaintiff as Landlord. This knowledge is an admission that Plaintiff had given notice. Defendant had admitted her husband was the tenant of Thaha. He had given evidence establishing the fact that he sold the premises to Plaintiff. Defendant, therefore, is the wife of the tenant. Therefore she is stopped by saying anything contrary to her husband.

In giving evidence, Thaha predecessor in title admitted that Munisamy was his tenant and later moved to the premises in question in 1980.

The learned District Judge's judgment is set aside for the reasons discussed above. Issues are answered,

1-9 District Judgers answers to stand.

10. yes

11. Plaintiff is entitled to the prayers.

12 Not proved

13 Knowledge was admitted

14. Not relevant

15 -17 District Judgers answers to stand.

18 Not in favour of the Defendant

19 Not proved

20 No

21 No evidence

22 Admitted

23 District Judgers answer to stand

24 No

25 Yes

26 Admission on P17 is enough

27 Not relevant

28 Plaintiff is entitled.

I direct the present District Judge to enter decree accordingly. I set aside judgment entered by the District Judge and hold in favour of the Plaintiff-Appellant for the abovementioned reasons. The Appeal is allowed.

**Judge of the Court of Appeal**

**M. T. MOHAMMED LAFFAR, J.**  
I agree.

**Judge of the Court of Appeal**