

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

Nail Fareena Keedle
No. 121/28, Main Street,
Kegalle

PLAINTIFF

C.A 1231/98(F)
D.C. Kegalle 159/RE

Vs.

1. J. B. Dassanayake
No. 66. Kalugalle Mawatha
Kegalle (Deceased)

- 2A. Seelawathie Dassanayake
No. 66, Kalugalle Mawatha
Kegalle.

DEFENDANTS

And

Seelawathie Dassanayake
No. 66, Kalugalle Mawatha
Kegalle.

2A.DEFENDANT-APPELLANT

Vs.

Nail Fareena Keedle
No. 121/28, Main Street,
Kegalle

PLAINTIFF-RESPONDENT

BEFORE: Anil Gooneratne

COUNSEL: Appellant is absent and unrepresented
Lal Matarage with Palitha Subasinghe
for Plaintiff-Respondent

ARGUED ON: 13.06.2011

DECIDED ON: 04.07.2011

GOONERATNE J.

This was an action for rent and ejectment filed in the District Court of Kegalle. District Court entered judgment in favour of the Plaintiff-Respondent as prayed for in the plaint. This appeal arises from the judgment dated 7.9.1988. On the date of hearing Appellant was absent and unrepresented. Even on at least two previous occasions Appellant was absent and unrepresented though initially appellant was represented by Counsel. Due to Appellant's absence the appeal is liable to be rejected due to the reason of Appellant's failure to exercise due diligence to prosecute this appeal. However this court considered the merits of this case and learned Counsel for Respondent assisted court by making submissions before this court on 13.6.2011 being the date of hearing of appeal.

Plaint filed in the District Court is based on 3 causes of action. i.e arrears of rental, reasonable requirement and deterioration of premises. Parties proceeded to trial on 8 issues. Defendant-Appellant did not raise any issues. On the evidence led at the trial there is no question that the premises in dispute is not rent controlled premises. The Rent Act applies to the premises, and the tenant would be entitled to the statutory protection available under the statute.

Notwithstanding the protection afforded to the tenant, I find that the learned Trial Judge has arrived at proper conclusions on arrears of rental, based on evidence. The wife of the original tenant (Dissanayake) had given evidence and the following have transpired from evidence which points are relevant.

- (a) that until 1990 there were arrears of rent
- (b) After 1990 rent paid but such payment had not been established.
- (c) Vague answer of witness that her late husband would have paid the arrears of rental. No definite reply as to whether rent was paid or not.

A cause of action has not been based on sub-letting but the trial Judge has arrived at this decision that the premises had been sub-let. If that be so equity demands that the land-lord should get relief. However based on arrears of rental the tenant has to be evicted.

The tenant has in this case taken up the position that arrears has been deposited in court. To give a strict interpretation to Section 22 (3) (c)

of the Rent Act one could conclude that rental must be paid direct to the land-lord and not elsewhere. 1993(2) SLR pg. 74 held that deposit to the credit of the case is no compliance with Section 22(3) (c) of the Rent Act.

On the question of reasonable requirement which is supported by evidence the case of *Thamby Lebbe Vs. Ramasamy* 68 N.L.R 356, Justice G.P.A Silva held “where in regard to the issue of reasonable requirement” it is shown that the hardship of the land-lord is equally balanced with that of the tenant, land-lord’s claim must prevail”. Followed in 1982(1) SLLR 106.

There is also a question of attornment in this case. In view of the above it would be unnecessary for me to deal with this proposition.

In all the above circumstances, there is no merit in this appeal.

Appeal dismissed with costs.

JUDGE OF THE COURT OF APPEAL