

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

C.A. No. 555 / 2000 F
D.C. Bandarawela No. 174 / RE

1. Mrs Hyacinth Sita Seneviratne,
(Trustee of Dasanayake Trust)
(deceased)
2. Dr. Mackingsley Gamini Dissanayake,
Trustee of the Dasanayake Trust,
3. Sarathchandra Bandara Ehalepola
Seneviratne,
Trustee of the Dasanayake Trust,
4420, Haethorne Street,
Washington DC.

Plaintiffs

Vs.

1. K. I. Mohamed Marzook,
50/1, Railway Station Road,
Haputale.
2. Jailabdeen Jaleel,
3. Nageswary Arumugam,
4. Miss. N. Krishnasamy,
5. A. Kumaresamoorthy,
All of No 9, Thambipillai Avenue,
Haputale.

Defendants

AND NOW BETWEEN

1. Mrs Hyacinth Sita Seneviratne,
(Trustee of Dasanayake Trust)
(deceased)

2. Dr. Mackingsley Gamini Dissanayake,
Trustee of the Dasanayake Trust,
3. Sarathchandra Bandara Ehalepola
Seneviratne,
Trustee of the Dasanayake Trust,
4420, Haethorne Street,
Washington DC.

Plaintiff Appellants

Vs

1. K. I. Mohamed Marzook,
50/1, Railway Station Road,
Haputale.
2. Jailabdeen Jaleel,
3. Nageswary Arumugam,
4. Miss. N. Krishnasamy,
5. A. Kumaresamoorthy,
All of No 9, Thambipillai Avenue,
Haputale.

Defendant Respondent s

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : H. Vithanachchi for the Plaintiff Appellants

M. Ashid Maharoo for the Defendant
Respondents

ARGUED ON : 02.10.2013

DECIDED ON : 29.11.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellants (hereinafter referred to as the Appellants) instituted the said action against the Defendant Respondents (hereinafter referred to as the Respondents) in the District Court of Bandarawela seeking to eject the Respondents from the land described in the schedule to the plaint. The Appellants have instituted the said action on the basis that the said premises have been sub-let to the 2nd to 5th Respondents by the 1st Respondent.

The 1st and 2nd Respondents have filed their answer denying the averments contained in the plaint and praying for a dismissal of the Appellants' action. After trial the learned District Judge, by judgment dated 06.09.2000 has dismissed the Appellants' action. The Appellants have appealed to this court.

Both parties have admitted that the premises in suit were governed by the Rent Act No 7 of 1972. The Respondents have further admitted that the said premises have been rented out to the 1st Respondent on 05th of November 1979 by the Founder Trustees of the Dasanayake Trust.

Upon the said admissions the burden was on the 1st Respondent to prove that the premises have not been sublet to the 2nd to 5th Respondents. The 1st Respondent in his evidence has testified that he was in occupation of the said premises since November, 1979, with his mother Umma Salma Beebi, sister Lathiefa Beebi and her husband Jeinul Abdeen Jaleel (the 2nd Respondent). He further stated that he paid the rent and his sister or her husband did not pay a rent. He has specifically stated that he has been in occupation of the premises since 1979.

During the cross examination of the 1st Respondent the Appellant has produced a certified copy of the Electoral Register marked P 5. According to P 5 the 1st Respondent was the chief house holder of premises No 705A, Railway Station Road. The 1st Respondent has admitted that the first name in P 5 was his name and the third person was his sister. In his evidence the 1st Respondent has further admitted that even the summons of the case was served on him at Railway Station Road by the Fiscal. The Fiscal's Report has been produced marked P 6. Said evidence has clearly shown that during the period relevant to this action the 1st Respondent was not in occupation of the premises in suit i.e. No.09 Thambipillai Mawatha, Haputale. Also it was crystallized that the 1st Respondent was in occupation of the premises No 705A, Railway Station Road.

When I consider the said evidence it is my considered view that the Appellants has led sufficient prima facie evidence to establish that there was subletting by proof of the fact that 2nd defendant was in the premises attend to his own work and that 1st Respondent appeared to have relinquished his control of the premises. The burden must then necessarily shift to the 1st Respondent to explain the presence of the 2nd Respondent on the premises doing his own work - a right 1st Respondent was entitled to exercise by virtue of his tenancy.

At the trial, the 2nd Respondent has not given evidence. Therefore it seems that the Respondents have not only failed to challenge the evidence of the Appellants but also to corroborate the evidence of the 1st Respondent. In the said circumstances it can be concluded on a balance of probability that the 1st Respondent has sublet the premises in suit to the 2nd Respondent.

In the case of Sangadasa vs. Hussain and Another [1999] 2 SLR 395 it was held that “It is sufficient for a landlord to establish a prima facie case of subletting and the burden then shifts to the tenant to explain the nature of the occupation of the alleged subtenant.”

Therefore I set aside the judgment of the learned District Judge dated 06.09.2000 and enter judgment as prayed for in the plaint. I allow the appeal of the Appellants with costs.

Appeal allowed.

Judge of the Court of Appeal