

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

Rohan Gamini Godahewa  
S N V Nazar Ali Bahar Zaid  
Minsulthan Nawal Base  
Post Box 389, Post Code 3  
Musket  
Sultantate  
F Oman  
Appearing by his Attorney  
Athula Indra Kumara  
of No. 140 G, Kanduboda  
Delgoda.

**Plaintiff**

**C.A. No. 542/97(F)**

**DC Gampaha Case No. 37673/L**

**Vs**

T.G. Gnanaratne  
39A, Walpola  
Rukgahawila

**Defendant**

**AND NOW BETWEEN**

T.G. Gnanaratne  
39A, Walpola  
Rukgahawila

**Defendant-Appellant**

**Vs**

Rohan Gamini Godahewa  
S N V Nazar Ali Bahar Zaid  
Minsulthan Nawal Base  
Post Box 389, Post Code 3  
Musket  
Sultantate  
F Oman  
Appearing by his Attorney  
Athula Indra Kumara  
of No. 140 G, Kanduboda  
Delgoda.  
**Plaintiff-Respondent**

**BEFORE**

: Deepali Wijesundera J.

**COUNSEL**

: M.M.A. Gaffoor J.

: Dhanya Gunawardena for the

Defendant-Appellant

S.A.D.S. Suraweera for the

Plaintiff-Respondent

**ARGUED ON**

: 08<sup>th</sup> May, 2015

**DECIDED ON**

: 30<sup>th</sup> October, 2015

**Deepali Wijesundera J.**

The plaintiff respondent instituted action in the District Court of Gampaha against the defendant appellant for the declaration of title to the land described in the schedule to the plaint and for ejectment of the defendant appellant whom the plaintiff claimed was a licensee. The defendant appellant had filed answer claiming that he was not a licensee but a tenant protected under the *Rent Act*. After trial the learned District Judge of Gampaha had delivered judgment on 30/07/1997 answering all the issue in favour of the plaintiff respondent and granted relief prayed by the plaintiff respondent. The defendant appellant has filed the instant application against the said judgment.

The learned counsel for the appellant stated that the appellant came into occupation of the premises as a tenant of the predecessor in title to the respondent namely Punyasoma Perera in 1981 which was establishing by the documents marked as **P7, P8, P9 and P10**. He stated that the evidence of the respondent and Punyasoma can not be believed as the documents produced by the respondent marked as **P7 to P10** proved otherwise. He further submitted that the respondent and the predecessor in title had fabricated a case to demonstrate that the

appellant is a licensee when in fact the evidence and the documents demonstrated that he is a tenant.

The appellant citing the judgment in **Zackariya Vs Benedict 53 NLR 311** said that the new landlord the person who purchased the property can not eject the tenant and must await the expiration of the lease.

He also cited the judgment in **C.B Seelawathie Vs H. Ediriweera S.C. Appeal No. 65/87 BALJ 1990 Vol.III Part 1** and stated that it was held in the above case that circumstances in which a tenant who continues in occupation after receiving notice of the transfer of the rented premises becomes the tenant of the transferee.

The learned counsel for the respondent submitted the appellant who claimed tenancy had to establish his tenancy to the satisfaction of the trial court. He stated that the respondent established his chain of title by evidence which was unchallenged and the trial judge arrived at his conclusion regarding the title of the respondent and answered all the issues in favour of the respondent. He further stated that once the issues were answered in favour of the respondent the burden shifts to the appellant to prove the fact that his occupation of the premises is under a legal right.

The respondent further stated that the appellant had claimed he came into occupation when Punyasoma was the owner of the house and one Suwaris was in occupation from 1985 and that the appellant occupied a room during that time. The lease agreement of Suwaris is marked as **P6** Punyasoma has given the said premises on a lease agreement to Suwaris in 1985.

The respondent submitted except for the appellant's evidence there is no other evidence to establish the appellant's tenancy to the said premises.

The respondent stated that the appellant who had come to occupy the said premises on the promise of leaving when he built his own house to Punyasoma failed to discredit his evidence when Punyasoma gave evidence in the District Court.

The appellant who appealed against the learned District Judge's judgment failed to establish a single legal argument to justify his appeal. In the appellate court the issues to be decided against an original court judgment are legal issues. The evidence which has been evaluated by the trial judge is not a matter for the appellate court to decide.

The argument of the appellant was that documents P7 to P10 prove that he was in occupation of the said premises since 1981. On perusal of the said documents it could be seen that the appellant had been a member of that household and not the chief occupant. This proves the argument of the counsel of the respondent who stated that the appellant occupied a room in the said house under one Suwaris whose lease agreement had been marked as P6. The appellant had failed to prove his tenancy in the District Court and the learned District Judge had correctly answered the issues framed before him in favour of the plaintiff respondent.

For the afore stated reason I decide to affirm the judgment of the /learned District Judge of Gampaha dated 30/07/1997 and dismiss the appeal with costs fixed at Rs. 10,000/=.

**JUDGE OF THE COURT OF APPEAL**

**M.M.A. Gaffoor J.**

I agree

**JUDGE OF THE COURT OF APPEAL**