

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

An application made by way of
appeal.

C.A Application. No.623/97(F)

Niyagama Gamage Malani,
No. 35 Peralalanda Watte,
Ganihimulla,
Dewalepola.

PLAINTIFF

Vs.

01.Rajapakse Gamaralage Gamini
Rajapakse,

02.Rita Hewavitharana,
No 23,
Chandanagama,
Yakkala.

DEFENDANTS

AND NOW BETWEEN

01.Rajapakse Gamaralage Gamini
Rajapakse,
02.Rita Hewavitharana,
No 23,

Chandanagama,
Yakkala.

DEFENDANT – APPELLENTS

Niyagama Gamage Malani,
No. 35 Peralalanda Watte,
Ganihimulla,
Dewalepola.

PLAINTIFF – RESPONDENT

Before : P.R.Walgama, J

**Counsel : Chula Bandara for Defendant – appellant.
: S.Mahawanniarachchi with Champika Rodrigo
for the Plaintiff – Respondent.**

Argued on : 09.11.2015

Decided on: 29.04.2016

CASE- NO- CA-623/97/(F)- JUDGMENT- 29/04/2016

P.R.Walgama, J

The instant appeal is arising out of the judgment and decree dated 4th September 1997, passed by the Learned District of Gampaha, decreeing the Plaintiff's case inter alia for a declaration that he is entitled to the possession of the house and land more fully described in the schedule thereto.

It is common ground that the subject premises were owned by the National Housing Development Authority. The Plaintiff- Respondent entered in to a Lease Agreement marked P1 with the National Housing Authority.

It is the position of the Plaintiff – Respondent that the Defendant – Appellant came to the possession of the premises in suit with leave and license of the Plaintiff. Further it is noted that the Plaintiff – Respondent has informed the National Housing Authority by his letters marked as P2 and P15 that he has given the house to the Defendant to be looked after in his absence, from October 1988. Therefore it is with the knowledge of the National Housing Authority, the suit premises were given to the Defendant – Appellant, and therefore there is no violation of the terms of the aforesaid Agreement by the Plaintiff as alleged by the Defendant – Appellant. It is to be noted that the Defendant – Appellant is the brother of the wife of the Plaintiff whom he has divorced.

On 21.11.1989 the Plaintiff has by his letter marked P4 requested to hand over the vacant possession of the premises to the Plaintiff, which was ignored and refused by the Defendant. In the course of the evidence of the Defendant- Appellant has transpired that in fact he has no right to be in the premises.

But it is seen from the Answer of the Defendant, that he planked his defence on the basis that he is a tenant, which position was totally changed in his testimony to Court.

As the Defendant – Appellant has emphasized the fact that as the Plaintiff – Respondent has violated the said Agreement to wit. By not paying the rent to the National Housing Authority the said Agreement is no longer in force, therefore the Plaintiff is not entitled to institute the action in the District Court to recover possession of the said premises. The Learned District Judge was of the view that the said purported Agreement marked P1 has not been terminated and as such it is still in force. Therefore any action against the Plaintiff-Respondent could be taken only by the National Housing Authority and the Defendant-Appellant has no locus to take any objection in respect of any matter arising out of the above agreement marked P1. Therefore it is abundantly clear that the afore said Agreement is in existence and in force.

The pith and substance of the Plaintiff – Respondent's case is that the Defendant – Appellant was entrusted to take care of the suit premises and had not demand or accepted any rent from him. Therefore the Defendant – Appellant does not get the protection of a tenant to be in this disputed premises.

It is abundantly clear that the Plaintiff – Respondent has not accepted a rent from the Defendant – Appellant, and the Learned District Judge in evaluating the testimony of the Defendant has commented that his evidence in Court was that he lent a sum of Rs. 15,000/ to his sister who was the former wife of the Plaintiff to go abroad and in order to set it off the Defendant – Appellant has come in to occupation of the said premises. Therefore it is pertinent to note that there had not been a contract of tenancy exist between the Plaintiff – Respondent and Defendant – Appellant. It is intensely relevant to note that the Defendant had never taken up the said position in his Answer.

In the above setting the Learned District Judge has categorically stated that Defendant's version is not trustworthy and lacks probity.

Further the Defendant – Appellant has raised the objection of the maintainability of the Plaintiff's action as it has been prescribed. It is stated in the impugned judgment that any matter relating to any rights of a party an action could be brought within ten years.

In the said back drop when the impugned judgment is reviewed this Court is of the view that the said judgment is unattended with errors.

For the foregoing reasons the Appeal is dismissed
subject to a cost of Rs. 5000/.

Appeal is dismissed accordingly.

JUDGE OF THE COURT OF APPEAL