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

C.A. Case No.400/2000 (F)

D.C. Embilipitiya Case No.5650/L

Ven. Thalawe Sumanatissa Thero,
Viharadhipathi,
Kawantissa Raja MahaViharaya,
Pallegama,
Embilipitiya.
PLAINTIFF

-Vs-

Palihapitiya Gamage Somapala,
'Gamini Textile',
Moraketiya Road, Pallegama,
Embilipitiya.
DEFENDANT

AND BETWEEN

Palihapitiya Gamage Somapala,
'Gamini Textile',
Moraketiya Road, Pallegama,
Embilipitiya.
DEFENDANT-APPELLANT

-Vs-

Ven. Thalawe Sumanatissa Thero (Deceased),
Ven. Middeniye Indraratne Thero,
Viharadhipathi,
Kawantissa Raja MahaViharaya,
Pallegama,
Embilipitiya.
SUBSTITUTED PLAINTIFF-RESPONDENT

BEFORE	:	A.H.M.D. Nawaz, J.
COUNSEL	:	D.M.G. Dissanayake for the Defendant-Appellant P.L. Gunawardena for the Substituted Plaintiff-Respondent
Written Submissions on:		10.07.2015 (Defendant-Appellant) 13.07.2015 (Substituted Plaintiff-Respondent)
Argued on	:	01.06.2015
Decided on	:	09.08.2017

A.H.M.D. NAWAZ, J.

By a plaint dated 02.10.1996, the Plaintiff-Respondent (hereinafter sometimes referred to as "the Plaintiff") instituted this suit against the Defendant-Appellant (hereinafter sometimes referred to as "the Defendant") seeking *inter alia* a declaration of title to the land morefully described in the schedule to the plaint, and ejectment of the Defendant therefrom.

Though the Plaintiff pleaded an instrument of dedication that allegedly gave rise to his title, the averments in the plaint alluded more specifically to an indenture of lease bearing No. 566 and dated 30.12.1986, whereby the Plaintiff alleged that he had leased

out the land to the Defendant for a period beginning from 01.01.1987 and terminating on 31.12.1989.

The Plaintiff further pleaded that the Defendant-Appellant became an over-holding lessee from 01.01.1990 and notwithstanding several demands made to the Defendant both verbally and in writing, he failed and neglected to hand over vacant possession of the subject-matter of the action and consequently he dispatched a letter of demand to the Defendant.

The Defendant filed answer denying the deed of lease pleaded in the plaint and averred that the title of the Plaintiff had long ceased with the acquisition of the land by the state, by virtue of a gazette notification bearing No. 336/3 and dated 11.02.1985.

Though issues had been raised on two dates of trial, namely 27.08.1997 and 06.05.1999, the learned District Judge proceeded to answer the issues raised only on 27.08.1997, having adopted them as the issues determinative of the case. I observe that though a larger number of issues were raised on 06.05.1999, the issues dated 27.08.1997, that have been answered by the District Judge, traverse substantially the grounds raised by the 2nd set of issues raised on 06.05.1999 and thus I proceed, in the consideration of this appeal, to examine whether the learned District Judge of Embilipitiya has correctly answered the issues raised on 27.08.1997.

The material issues could be summed up. The Plaintiff raised the issues whether the Defendant took on lease the subject-matter of the action by virtue of the indenture of lease bearing No.566 and there was an infringement of this lease in that upon the expiry of the lease on 31.12.1989, the Defendant became an over holding lessee.

The issues raised on behalf of the Defendant focused entirely on the acquisition of the land by the Road Development Authority. The informal nature of the lease in that it was not properly executed in terms of Prevention of Frauds Ordinance was not raised as an issue by the Defendant, though it figured prominently in the arguments before this Court.

No issue was raised on the title of the Plaintiff, though an instrument of dedication was averred in paragraph (1) of the plaint. Much was made in the arguments before this Court of the title pleaded by the Plaintiff and the prayer for a declaration of title in the plaint. The Counsel for the Defendant-Appellant contended that the action of the Plaintiff-Respondent displayed the character of a *rei vindicatio* action inasmuch as the plaint recited a title devolving on him by way of a deed of dedication and the prayer too sought the relief of a declaration of title. It has to be pointed out that the Plaintiff, notwithstanding some elements of a *rei vindicatio* action inherent in the plaint, never raised an issue on his title in the first set of issues put forward on 27.08.1997. What was raised by the Plaintiff as the first issue on 27.08.1997 was whether the Defendant took on lease the subject-matter of the action from the Plaintiff, by virtue of the deed of lease No.566, attested by Notary Public W.G.S. Gunawardena on 30.12.1986. The case that went to trial was whether the Defendant took on lease the subject-matter in question. No issue as to title was raised by the Plaintiff.

The issues in a civil suit define the scope and ambit of a party's case and the first issue put forward by the Plaintiff, notwithstanding the plea of title in the plaint, clearly shows that the Plaintiff was relying on the breach of the lease to ground his action for ejectment. However, I hasten to point out that the first prayer in the plaint seeks a declaration that the Plaintiff is entitled to the ownership of the land described in the schedule to the plaint. Pinpointing this prayer, the learned Counsel for the Defendant-Appellant argued that this was a *rei vindicatio* action and consequently a strict proof of title was *per se* necessitated. The non-production of the instrument of dedication at the trial shows that the Plaintiff has not established the elements of a *rei vindicatio* action – so contended by the Counsel for the Defendant-Appellant.

As I have observed above, the pertinent issue raised by the Plaintiff engages not a question of title but a breach of a lease and therefore the cause of action of the Plaintiff is rooted in contract, whatever his pleadings averred. No doubt, the plaint

displays a combination of a plea of title allegedly through a deed of dedication and rights of a lessor devolving through a contractual document – whose informality figured prominently in the argument. This practice of combining elements of both a *rei vindicatio* action and a declaration of title arises through a misappreciation of the distinction between the two actions known as a *rei vindicatio* action and a declaratory suit and the pleaders will do well to bear in mind the divergent nature of these two distinct actions, which is brought out so lucidly in two separate judgments by E.F.N. Gratiaen J. and H.N.G. Fernando J. in the *locus classicus* ***Pathirana v. Jayasundera*** 58 NLR 169.

Their Lordships authoritatively held that in an action *rei vindicatio* the Plaintiff should prove his title to the property strictly, as the Defendant disputes the same; while in an action for declaration of title the Plaintiff should only prove the fact that the Defendant came to possession of the property on a contract, and at the expiration thereof he did not surrender possession of the property.

Since the Plaintiff has not proved his title to the land in dispute and no issue was raised on the question of title of the Plaintiff, his prayer that he be declared entitled to the land cannot be granted.

Certainly there is an affinity between the two actions in that whilst in the *rei vindicatio* the Plaintiff asserts the title against the whole world, the Plaintiff in a declaration of title asserts ownership *qua* owner or lessor or licensor against a party who entered into a contract with him.

In an action founded on declaration of title, the Plaintiff does not need to prove his title, as the assertion is that the Defendant went into occupation of the property with the leave and license of the Plaintiff. Thus the title of the Plaintiff is irrelevant in a declaration of title suit which is based on contract.

Thus, the distinctive features of the two actions may be summarized in a nutshell.

1. The plaint in a vindicatory action should set out the title clearly, that is, the Plaintiff should narrateand plead his title fully, and prove his title in strict sense against the Defendant.

In this case, barring only one paragraph of the plaint, which recited a deed of dedication, there were no further averments reciting a pedigree or title. But of course there was a prayer for a declaration of title in the plaint.

2. The plaint in a declaration of title suit should narrate facts that set out a contractual nexus between the parties and how the Defendant acted in infringement of the contract. The plaint in this case did set out a lease which was argued in this appeal to be unenforceable because of its informality.

The majority of the averments in the plaint demonstrates an action based on a contract of lease that was entered into between the Plaintiff and Defendant. Therefore there is no doubt that this is a declaration of title suit. Why then do we call it a declaration of title suit? Given that even a non-owner can lease out somebody else's premises, when a Plaintiff sues *qua* a lessor in order to recover the property, the Plaintiff seeks a declaration of title to possession of the land *qua* a person who in effect claims that the lease of the tenant in possession has ended, for example through failure to pay rent or simple expiration of the term of the letting or through a quit notice.

So the argument mounted by the Defendant-Appellant that the plaint displays more of the elements of *rei vindicatio* than a declaration of title fails, as I take the view that the joinder of an assertion of title through a deed of dedication in one solitary paragraph of the plaint with narration of a contract of lease and its breach averred in other paragraphs does not invest that action with the exclusive character of a *rei vindicatio* action. Rather the specific averment in the plaint as to a lease and its breach invest the action with a character of a declaratory suit and the issue raised on a lease and breach thereof, absent any issue on title, reinforces the view I take that this was a declaration of title action.

This is not a case of a Plaintiff, who filed an action of one type but later attempted to convert it into the other styled action.

Thus the salient averments in the plaint and the issue raised on license by way of a lease are reminiscent of a declaration of title case where a strict title of ownership is not required to be proved. In such cases, the Plaintiff only proves that the Defendant came into possession of the property on a contract under him, and that after the expiry or termination of the contract, the Defendant does not surrender vacant possession of the subject-matter. In a declaration of title case, a strict proof of title is irrelevant, as the Defendant (tenant/licensee) is estopped from denying the title of the Plaintiff as landlord (lessor) or licensor. This rule of estoppel is also embodied in Section 116 of the Evidence Ordinance which declares:-

> *"No tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and*
>
> *no person who came upon any immovable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given."*

Section 116 of the Evidence Ordinance makes it clear that title need not be pleaded or proved as tenants (referred to in 1st paragraph of Section 116) and licensees (alluded to in 2nd paragraph of Section 116) are estopped from denying the title of the landlords and licensors.

The plaint filed in this case, quite contrary to the above legal position, prays for a declaration of title in the prayer which is otiose or superfluous given the peremptory rule of contractual estoppel in Section 116. I hasten to add that pleaders will do well not to include a prayer for a declaration of title when the Plaintiff seeks to recover property pursuant to a breach of contract such as a lease. In fact, as H.N.G. Fernando, J. (as he then was) articulated in ***Pathirana v. Jayasundera***;

".....There is however the further point that the Plaintiff in his prayer sought not only ejectment but also a declaration of title, a prayer for which latter relief is probably unusual in an action against an overholding tenant...."[1]

In an action for a declaration of title, there need not be a prayer for declaration of title as it cannot be denied by the tenants and licensees. A mere prayer for ejectment is sufficient -see also the views of Weerasuriya J. (with Ismail J. concurring) in ***Pattividana v. Samaranayake*** (1998) 1 Sri LR 112 where the learned Judge reiterated the point that as the Plaintiff-Appellant had sought to eject his divorced wife who was in a position of an over holding licensee, the rule of estoppel precludes her from denying the title of the Defendant-Appellant. So much for the pleadings and the ingredients of the action in the case which I had to comment upon in view of the fact that the Counsel for the Defendant-Appellant contended that the case that was presented to the District Court was only *rei vindicatio*, which argument I am not in agreement with, having regard to the reasoning I have advanced above.

Given that the case presented before the District Court of Embilipitiya was a declaration of title case based on a lease, one needs to examine the evidence whether the lease was proved as averred in the plaint and issues.

Only the original Plaintiff gave evidence and stated that he let out the premises on a lease to the Defendant. The deed of lease was marked as **P1** subject to proof. In fact **P1** is only a certified copy of a lease prepared by the Notary but had not been duly executed or registered.

Through the Plaintiff was cross-examined on the informal nature of the document marked **P1**, the fact that it was the Plaintiff who licensed the Defendant to stay on the land has not been denied by the Defendant. In fact the Plaintiff quite clearly testified that he let out the premises to the Defendant in 1986. Upon the expiry of the lease the Defendant wanted an extension of the lease but he did not come forward to have it extended. By way of a letter of demand dated 18.07.1990 he was told to surrender the

[1] 58 N.L.R 169 at p.171

premises if he did not wish to have the lease extended -vide the testimony of the Plaintiff at pages 31, 32 and 33 of the appeal brief. The Plaintiff also testified as to how the failure to pay the rentals took place.

In cross-examination the Plaintiff stated that he became the Viharadhipathy of the temple and as such was the lessor of the subject-matter in question. It was put to the witness that the state had acquired this property but the witness denied such acquisition whilst at the same time referring to some compensation being obtained for the land. One cannot however discount the fact that the Plaintiff was also questioned on a case which he had filed against the Mahaweli Authority over the same land. This shows that there was an issue between Mahaweli Authority and the Plaintiff over the same subject-matter but it was not established before the learned District Judge what ultimately became of this case. It has not been satisfactorily established who ultimately became the owner of this land if at all there was an acquisition. Therefore the learned District Judge of Embilipitiya was quite right when he answered the issues raised on the basis of *jus tertii* against the Defendant.

But the fact remains that the assertion of the Plaintiff that he was the lessor of this land to the Defendant has not been denied at all nor has it been put to the Plaintiff that he was uttering a falsehood on the question of lease -*see* page 33 of the appeal brief.

The suggestions as to acquisition by state remain unproved as neither the acquisition nor the ownership of the land in the state has been proved by the Defendant, though issues were raised as to *jus tertii*.

No doubt that the informality of **P1** (the indenture of lease) has been put to the Plaintiff. But it would appear that when this document was first produced, it was never objected to. It was only later that it has been objected to as *subject to proof* -see page 33 of the proceedings. This document has not been objected to either when the Plaintiff closed his case. The Plaintiff also stated that the original of the deed of

indenture was in the possession of the 1st Defendant who had signed the original indenture -see the re-examination of the Plaintiff.

Cumulatively there is the oral evidence of the Plaintiff that he let out the premises on lease to the Defendant. This oral testimony was not contradicted but only the supporting document **P1** which was informal in nature was impugned in cross-examination of the Plaintiff. In effect the oral evidence of the Plaintiff that he was the lessor remains uncontradicted and uncontroverted. The Defendant neither gave evidence nor produced any documentary evidence. The letter of demand **P3** was not denied. In the circumstances the oral assertion of the Plaintiff that he let out the premises on lease becomes more probable and I take the view that the Plaintiff has established a contractual nexus with the Defendant on a balance of probabilities.

Irrelevancy of *Jus Tertii* in a Declaratory Action for ejectment.

The plea of *jus tertii* has not been established. There is no evidence that the Defendant could show to the effect that a third party has sued the Plaintiff for declaration of title and ejectment, if at all title to the land has passed to the third party consequent to an acquisition. In my view the issues relating to *jus terii* raised on behalf of the Defendant on 27.08.1997 were quite irrelevant and unnecessary in a case such as this. If one looks at the issues raised by the Plaintiff on the same day, they all focus on the lease the Plaintiff gave the Defendant, the expiration thereof and the fact that the Defendant has been staying on the land notwithstanding letters to quit has been proved.

Certainly the issues connote a cause of action based on a declaration of title which the Plaintiff was claiming as a lessor. Issues raised by him make it quite clear that this action is not *rei vindicatio*. He was not raising any issue on his title. He was alleging a contractual nexus. It is trite law that the question of title is irrelevant in a suit for ejectment of a lessee or licensee -*see* the pertinent observations of U. de Z. Gunawardana J. in ***Ruberu and Another v. Wijesooriya*** (1998) 1 Sri LR 58 wherein the learned Judge held:

"Whether it is a licensee or a lessee, the question of title is foreign to a suit in ejectment against either. The licensee (defendant-respondent) obtaining possession is deemed to obtain it upon the terms that he will not dispute the title of the plaintiff-appellant without whose permission he would not have got it."

If title of the Plaintiff is irrelevant in a mere Declaration of Title action for recovery of possession, equally irrelevant would it be to plead and raise issues based on *jus tertii* on behalf of a Defendant in such an action. What does the Defendant seek to prove by pleading *jus tertii*? The object would be to establish that the Plaintiff has lost his title by the fact of transfer of that title to another. *Such a plea may be relevant in an action rei vindicatio but not in a declaratory action for ejectment.* It is trite that even a non owner can let out property on lease -*see* ***Imbuldeniya v. D. De Silva.***[2] So the learned District Judge was in error in permitting these issues to be raised on behalf of the Defendant but he quite rightly answered them in the negative at the end of the trial. The learned District Judge was also quite right in not declaring title for the Plaintiff as prayed for quite erroneously by him because the action was not *rei vindicatio* for him to declare title. No issues were raised on title and there is no evidence on record to establish title. In all its elements the action was one based on declaratory action as quite compendiously delineated by the two judges E.F.N. Gratiaen J. and H.N.G. Fernando J. (as he then was) in ***Pathirana v. Jayasundera*** (*supra*).

Proof of the elements of the declaratory action

The record affords ample proof of the fact that the Defendant had signed an original of an indenture of lease, though only a copy was produced at the trial. None of these things have been asserted to be false nor did the Defendant testify to that effect, though only the suggestions made by his attorney-at-law to the Plaintiff remain on the record, which do not induce a belief in the case of the Defendant whose issues were confined to *jus tertii* alone. So I would hold that on the whole the Plaintiff has

[2] (1987) 1 Sri.LR 367 at 371.

established leave and licence and its expiration but the Defendant has stayed put on the land refusing to go. The Defendant has not questioned the land-lordship at all -*see* the re-examination of the Plaintiff at page 39 of the brief.

Apart from ejectment which was rightly granted, then it remains to be seen whether the other relief prayed for by the Plaintiff namely lease of rentals could be granted. This turns on the question of the informal lease that was produced before Court namely **P1**.

Much argument was advanced before this Court that **P1** was a non-notarial lease which does not establish a valid lease. I hold that a landlord in a declaration of title action need only prove that he licensed the use of his premises and he subsequently terminated the licence or the licence has run its course and he now seeks repossession. Once the Plaintiff has made out these elements, he is entitled to move for an order of ejectment because the order of ejectment will clear the land and declare ***per se*** that the former lease is no longer on foot -*see* ***AG Securities v. Vaughan*** (1990) 1 A.C 417; 1988 3 W.L.R 1205 - House of Lords.

Once again I bear in mind that this action is called a declaration of title suit with no declaration of actual title being prayed for. It is a declaration though by Court that the former tenant/licensee is ejected. To that extent the title of the action "*declaration of title*" is an oxymoron in that the Plaintiff prays for no declaration of title but only ejectment but it is called a declaratory action.

Informality of lease and position of the lessee under such a lease

Undoubtedly the informality of the lease conveys the effect of an invalid lease as it contravened Section 2 of the Prevention of Frauds Ordinance. If the informality of the lease is now taken as a defence to the Plaintiff's case, the necessary consequence of that contention is that the party in possession under the informal lease must be in a position indistinguishable from that of a trespasser. This conclusion would now appear to have been accepted by a *cursus curiae* in Sri Lanka. In ***Perera v. Perera*** (1967)

70 N.L.R 79 - a Divisional Bench of the Supreme Court placed emphasis on the unqualified invalidity of the informal agreement and the attitude reflected in this decision was unreservedly adopted in ***Samarakoon v. Starrex*** (1965) 71 C.L.W 25.

In such a situation, the lessor would be able to eject the lessee under such an agreement, without giving a month's notice. This principle was extended in ***Hinniappuhamy v. Kumarasinghe*** (1957) 59 N.L.R 566 wherein it was held that even where the tenant under the informal agreement has not attorned to the transferee from the lessor, the transferee from the lessor is competent to eject forthwith the tenant under the informal agreement from the land, there being no right in the tenant to require that he should be given a month's notice by the original lessor prior to ejectment by the transferee.

I have already held that the Plaintiff has established that he was the lessor of the Defendant. The oral testimony of the Plaintiff was not assailed by the Defendant nor did the Defendant give evidence giving his version and controverting the stance of the Plaintiff.

The only suggestion that was made to the Plaintiff was that he had not entered into legally valid lease. **P1** was assailed in appeal as an informal lease. The informality would only aggravate the position of the lessee once the Court finds, by other evidence, that the tenant come into occupation by leave and licence. If the lease is a nullity, he would be in no better position than that of a trespasser. Thus he would be liable to be ejected with no notice.

Action for use and occupation

He might even advance the proposition that *a fortiori* no obligation devolves on him to pay the landlord any stipulated rent. Nevertheless, our Courts have refused to permit a tenant who had been in occupation of the land, to enjoy gratuitous possession. The landlord has been allowed a reasonable sum as compensation for the tenant's possession of the land. The remedy conferred on the landlord has been **the action for use and occupation.**

The genesis of this equitable remedy is the decision of a Bench of three Judges of the Supreme Court in ***Perera v. Fernando***.[3] In a slew of cases (including ***Dissanayake v. Prancisku***,[4] ***Wijeysiriwardene v. Soysa***,[5] ***SinnoAppu v. SinnoAppu***[6] and ***Kathiragamu v. Nadarajah***[7]), the ruling in ***Perera v. Fernando*** (*supra*) was consistently followed, and the principle was applied that, where a person is let into possession of immovable property under an agreement invalid at law, he is liable to pay compensation if sued in an action for use and occupation.

Quasi-contract aimed at obviating unjust enrichment

The admission of the action for use and occupation at the instance of the landlord in this context can be explained in a manner which involves no repugnance to the provisions of the Frauds Ordinance. Although it was asserted in ***Marikkar v. Siyya***[8] that the action for use and occupation was an action *ex contractu*, it is clear that what is enforced by means of the action for use and occupation is not the parol agreement, since this is compulsorily declared void by the terms of the Prevention of Frauds Ordinance. *The theoretical foundation of the action for use and occupation is an implied contract - or a contract arising by operation of law -* to pay a reasonable sum for the use and occupation of the premises. *The liability recognized by the action for use and occupation is quasi-contractual in character, and is founded on the doctrine which precludes unjust enrichment.* This basis was eloquently explained in ***Eliyathambuy v. Kandiah***.[9]

In ***Kathirgamu v. Nadarajah***[10] Basnayake J. stated:

> *"The principle is that if a person has the actual use or enjoyment of land by the permission or on sufferance of another, whether there be a demise or not, this form of action may be*

[3](1864) Ramanathan's Rep. 83.
[4](1899) 1 Tambyah's Rep. 23.
[5](1906) 1 A.C.R 43.
[6](1925) 6 C.L. Rec. 171.
[7](1949) 40 C.L.W. 34.
[8](1926) 4 Times of C.L.R.124.
[9](1946) 47 N.L.R. at 201.
[10](1949) 40 C.L.W 34

maintained to recover the agreed rent (if any) or a reasonable satisfaction for such use and occupation. This Court has held so far back as 1884 that a landowner in this country can recover for use and occupation without a notarial instrument, if there has been actual use and occupation. The principle underlying the action appears to be the maxim, nemo alterius detrimento locupletari debet".[11]

The maxim *nemo alterius detrimento locupletari debet* or *nemo debet locupletari cum alterius detrimento* simply means that no one shall enrich himself at the expense of another. The maxim emanates from the principle of unjust enrichment which is ingrained in our law and there is unjust enrichment when someone who has been let into possession of someone's property has long enjoyed the *seisin* of the property without paying a dime. It is therefore in the interest of justice imperative that the Court awards reasonable compensation for the use and occupation of the property.

From the foregoing, I conclude that the case of the Plaintiff for ejectment succeeds. The learned District Judge cannot be faulted for the conclusion that he reached in ordering the ejectment of the Defendant. Therefore the order of ejectment of the Defendant-Appellant is affirmed.

The learned District Judge has also allowed the Plaintiff's claim for arrears of lease rentals commencing from 01.01.1990 the day after the informal lease expired. On the principle of equity that the landlord must be compensated for the use and occupation of the land that he let out, I do not find the order for payment of lease rentals inconsistent if they are awarded as compensation for use and occupation of the land. The phraseology, "arrears of lease rentals" may be couched as compensation for the use and occupation of the land. It accords with principles of justice, equity and good conscience -*see* the percipient view of Pereira J. in the Full Bench decision of ***Dodwell & Co v. John et al***[12] where the learned judge opined *"This Court has often pointed out that our Courts (in Ceylon) are Courts of Law and Equity"*. It is significant to note how Pereira J.

[11] At p.35.
[12] (1915) 18 N.L.R 133 at p 141.

was echoing the development that had taken place in the United Kingdom as far back as 1870s when with the advent of the Judicature Acts the two systems of common law and equity still operated under very different rules but they came to be administered in one single Court, with a single judge (or panel of judges as appropriate) giving judgment on both legal and equitable matters in the course of a single case. Both the streams of Common Law and Equity have flown together in our courts and combined together not only to nourish our legal remedies but also to operate as effective tools to ensure fair dealing between the parties. Claimants or Plaintiffs would no longer have to bring two separate actions in order to resolve issues arising under one claim. Therefore compensation for use and occupation of the land being an equitable remedy is inherent in the order of the learned District Judge when he ordered the Defendant to pay the Plaintiff arrears of rentals. Invalidity of the lease would be no defence against such a remedy.

I thus affirm the judgment of the learned District Judge of Embilipitiya dated 13.07.2000 and proceed to dismiss the appeal.

JUDGE OF THE COURT OF APPEAL