

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

Rasammah Selvarajah, (Deceased)  
No.16, Mayfield Road,  
Kotahena,  
Colombo 13.

Original-PLAINTIFF

C.A. Case No.254/1999 (F)  
D.C. Colombo Case  
No.6101/ZL

Kandiah Selvarajah,  
No.16, Mayfield Road,  
Kotahena,  
Colombo 13.

Substituted-PLAINTIFF

-Vs-

Rengasamy Singamuthu Keerthisingam,  
No.23 1/B, Anula Road,  
Colombo 06.

*And of*

No.16, Mayfield Road,  
Kotahena,  
Colombo 13.

DEFENDANT

AND

Rasammah Selvarajah, (Deceased)

No.16, Mayfield Road,  
Kotahena,  
Colombo 13.

Original-PLAINTIFF

Kandiah Selvarajah, (Deceased)  
No.16, Mayfield Road,  
Kotahena,  
Colombo 13.

Substituted-PLAINTIFF-APPELLANT

1. Rajayogani Kailainathan,  
No.16, Mayfield Road,  
Kotahena,  
Colombo 13.

*And presently of*

No.84, Prospect Ring,  
London N2 8BS,  
United Kingdom.

01<sup>st</sup> Substituted-Substituted-PLAINTIFF-  
APPELLANT

2. Sivayogini Thiruchelvam,  
No.16, Mayfield Road,  
Kotahena,  
Colombo 13.

02<sup>nd</sup> Substituted-Substituted-PLAINTIFF-  
APPELLANT

-Vs-

Rengasamy Singamuthu Keerthisingham,  
(Deceased)

No.23 1/B, Anula Road,  
Colombo 06.

*And of*

No.16, Mayfield Road,  
Kotahena,  
Colombo 13.

DEFENDANT-RESPONDENT

AND NOW

1. Rajayogani Kailainathan,

No.16, Mayfield Road,  
Kotahena,  
Colombo 13.

*And presently of*

No.84, Prospect Ring,  
London N2 8BS,  
United Kingdom.

01<sup>st</sup> Substituted-Substituted-PLAINTIFF-  
APPELLANT

2. Sivayogini Thiruchelvam,

16, Mayfield Road,  
Kotahena,  
Colombo 13.

02<sup>nd</sup> Substituted-Substituted-PLAINTIFF-  
APPELLANT

-Vs-

1. Rajeswary Keerthisingam,  
No. 154, Kotahena Street,  
Colombo 13.
2. Karthika Keerthisingam,  
No. 154, Kotahena Street,  
Colombo 13.

Substituted-DEFENDANT-RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : S. Tissera with S. Ruthiramoorthy for the  
Substituted Plaintiff-Appellant.  
C.V. Vivekananthan with Pansy N. Joseph for the  
Substituted Defendant-Respondents

Decided on : 05.07.2019

A.H.M.D. Nawaz, J.

The Plaintiff-Appellant (hereinafter sometimes referred to as "the Plaintiff") instituted this action praying for a declaration that she was a lawful occupier and the owner of the premises, described in the schedule to the plaint, and for an order of injunction and to eject the Defendant in this case from the said premises on the ground that he was a trespasser and damages.

The Defendant filed his answer alleging a statutory tenancy. The following issues were raised on behalf of the parties.

## ISSUES BY THE PLAINTIFF

- 1) Is the original Plaintiff tenant of the Premises No.16, Mayfield Road, Kotahena more fully described in the schedule to the Plaint since 1968?
- 2) Upon the death of the original Plaintiff does the substituted Plaintiff in the aforesaid house?
- 3) Are the original Plaintiff the substituted Plaintiff residing in the aforesaid house since 1968 until today?
- 4) As set out in the schedule to the Plaint did the original Plaintiff obtain the title after making the full payment in Case No.6009/ RE and 14534/L in the District Court Colombo?
- 5) Did Defendant come as a tenant to the room shown as X in the sketch marked as P1 annexed to the Plaint from 02<sup>nd</sup> of April 1978? Yes
- 6) Did Defendant on his own vacate on 21.03.1983 under the original Plaintiff? No
- 7) Has the Defendant entered in to the occupation of this room without the permission when the original Plaintiff was not there between the two date of 15<sup>th</sup> August 1983 and 28<sup>th</sup> September 1983? No
- 8) Did the original Plaintiff first come to know on 28<sup>th</sup> September 1983 with regard to this unlawful occupation? No
- 9) Accordingly did the substituted Plaintiff request the Defendant vacate by way of several legal ways? Not proved
- 10) Is the Defendant still in unlawful occupation of the premises in suit refusing to vacate said house? Stay lawfully
- 11) As set out in the paragraph 9 of the 7<sup>th</sup> schedule of the Plaint has the Defendant causing damages to the original Plaintiff substituted Plaintiff? No
- 12) If the above issues are answered in favour of the Plaintiff is the Plaintiff entitled for the reliefs prayed as in the Plaint? No

## ISSUES BY THE DEFENDANT-RESPONDENT

- 13) Is the Premises in suit governed by the Rent Act? Not proved
- 14) Did the deceased Plaintiff give on rent divided and defined portion of the premises in suit shown as A, B,C the sketch marked as PI filed with the Plaintiff to the Defendant? Yes
- 15) Was the Defendant tenant under the deceased Plaintiff in the said divided portion? Yes
- 16) If the above issues 13 to 15 are answered in affirmative can the Substituted Plaintiff have and maintain this action?
- 17) Does the Plaintiff comply with the Section 41 of the Civil Procedure Code? Not proved
- 18) If the above Issue No.17 is answered in negative should the Plaintiff be dismissed?
- 19) Has the cause of action arisen to the Substituted Plaintiff to make an application for an interim injunction against the Defendant as prayed for in the Plaintiff?
- 20) However, are there any probable grounds for the Substituted Plaintiff to make application for interim relief as prayed for in the Plaintiff?
- 21) If above issues No.19, 20, or one of them answered in negative can the substituted Plaintiff claim interim reliefs as prayed in the Plaintiff?
- 22) Has any cause of action arisen to the substituted Plaintiff against the Defendant as constituted in the Plaintiff?
- 23) Has this action filed after lapse of the time period?
- 24) If the above Issue No.22 is answered in negative and Issue No.23 is answered in affirmative can the Substituted Plaintiff have and maintain this action?

It was on these issues that the trial had proceeded in the District Court and Issue No.5 raised by the Plaintiff makes it clear that an adjudication was required as to whether the

Defendant came as tenant from the date 02<sup>nd</sup> of April 1978. This issue has been answered in the affirmative.

Another vital issue that the Plaintiff has raised is-Did Defendant on his own vacate on 21.03.1983 under the original Plaintiff? This issue has been answered by the learned District Judge in the negative. Once the answers given by the learned District Judge are assessed for their correctness, the decision would then be dispositive of the rights of the parties. The question of trespass that the Plaintiff has raised in the subsequent issues depends on the answer to the question whether the Defendant abandoned the premises *sine animo revertendi*? In other words did he abandon the premises without any intention to return?

If he had had the *animus revertendi* (the intention to return), it simply means that he had not abandoned his tenancy and in that event the tenancy had continued without a break. Then the question of trespass will not arise. In fact issues were to the effect that the Defendant during the period of 15<sup>th</sup> August and 28<sup>th</sup> of September 1983, had entered into this premises without permission raising thus the question of unlawful trespass. If one looks at the issues of the Defendant, it is crystal clear that the tenor of the issues is for the purpose of establishing that the tenancy is lawful and the continued tenancy is lawful as well. The learned District Judge has found for the tenant and before doing so he has indulged at the outset into the question whether the Plaintiff has established her title to the premises. I would not go into it as what is before this Court is the relationship between a landlord and tenant.

Quite relevant to the case is the extinctive prescription that the defendant has pleaded in Issue No.23. In other words the Defendant has pleaded that the cause of action of the Plaintiff is prescribed under the provisions of the Prescription ordinance can this case be had and maintained?

The learned District Judge has decided that the Plaintiff has not established his title but rather he has decided that this case is filed by the Plaintiff on the basis that she is a lawful possessor. By that token the District Judge has taken the view that this is a

possessory action and if dispossession has taken place on 25<sup>th</sup> of July 1983, the plaint was out of time since it was filed on 7<sup>th</sup> of June 1989. Whilst agreeing with this finding, let me get back to the principal question in this case namely whether the defendant in this case has forcibly and unlawfully come into possession to this premises.

There is no doubt that the Defendant in this case had come into possession to this premises on 2<sup>nd</sup> of April 1978. It simply means that he had been in lawful possession from that date onwards. As per the paragraph 05 of the plaint the Defendant or his representatives had been continuing in possession of this premises up to 25<sup>th</sup> of July 1983. In the paragraph 05 of the plaint, it is averred that from that day onward the said room had been vacant. As per Issue No.06, the Defendant had left the said premises on 21<sup>st</sup> of March 1983. As per the evidence adduced by the Plaintiff, the Defendant during the said period of time, vacated and left that place for the reason that he entered into marriage.

The Plaintiff testified that after his marriage the Defendant went into occupation of his wife's house that was at Wattala. But, the Defendant in his evidence stated that though he married during the said period of time, he did not vacate or leave the said premises. As per admission of the Plaintiff, the Defendant or his representatives had been continuing in possession of that premises up to the period of last part of June 1983. This shows that the occupation of the premises by the Defendant had been unbroken. If he had gone into occupation of his wife's premises, it was for a short while and that cannot be taken as an abandonment of tenancy.

It has been proved that the defendant never terminated his tenancy with the landlord nor did the landlord give him notice to quit.

There was an attempt on the part of the Plaintiff to establish that the defendant entered into the premises unlawfully between the period of time from 15<sup>th</sup> of August 1983 and 28<sup>th</sup> of September 1983 that is within a period that is less than 45 days. The Plaintiff herself had closed down the said premises and left for Jaffna on 28<sup>th</sup> of August 1983, for residence.



The fact that the tenant was absent from the premises for a short period does not mean that the Defendant terminated the tenancy. He did come back and that shows that he had the *animus revertendi*.

Testifying on his behalf, the Defendant narrated as to how he stayed in a detention camp when there was communal violence in 1981. This does not mean that the Defendant gave up possession of the premises and handed it over to the Plaintiff. Leaving tenanted premises due to an exigency such as a communal right cannot give rise to termination of tenancy. The learned District Judge of Colombo was quite right in deciding that the tenancy continued and the Defendant never became a trespasser.

In the circumstances I affirm the judgment dated 26.03.1999 and dismiss the appeal.

JUDGE OF THE COURT OF APPEAL