

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

S.C. Appeal No. 97/2013

S.C (HCCA) LA Application No. 410/2012

WP/HCCA/I.N/MT/101/08 (F)

D.C. Mt. Lavinia 607/00/RE

In the matter of an Application for Leave to Appeal in terms of the Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5(c) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by the Act No. 54 of 2006

Samarakoon Mudiyanseelage Saheli Sajeera
Samarakoon
No. 80, Library Mawatha,
Maharagama

PLAINTIFF

Vs.

Karunadasa Abeywickrema
No. 72, "Samram Groceries"
High Level Road,
Maharagama

DEFENDANT

AND BETWEEN

Karunadasa Abeywickrema
No. 72, "Samram Groceries"
High Level Road,
Maharagama

DEFENDANT-APPELLANT

Vs.

Samarakoon Mudiyanseelage Saheli Sajeera
Samarakoon
No. 80, Library Mawatha,
Maharagama

PLAINTIFF-RESPONDENT

AND NOW

Karunadasa Abeywickrema
No. 72, "Samram Groceries"
High Level Road,
Maharagama

**DEFENDANT-APPELLANT-PETITIONER-
APPELLANT**

Vs.

Samarakoon Mudiyanseelage Saheli Sajeera
Samarakoon
No. 80, Library Mawatha,
Maharagama

**PLAINTIFF-RESPONDENT-RESPONDENT-
RESPONDENT**

BEFORE: B.P. Aluwihare P.C. J.,
Anil Gooneratne J. &
Nalin Perera J.

COUNSEL: Gamini Hettiarachchi for the
Defendant-Appellant-Petitioner-Appellant

Ranjan Suwandarathne P.C. for the
Plaintiff-Respondent-Respondent-Respondent

ARGUED ON: 19.06.2017

DECIDED ON: 03.08.2017

GOONERATNE J.

This was an action filed in the District Court of Mt. Lavinia bearing No. 607/00/RE to eject the Defendant-Petitioner-Appellant and all those holding under him from the property described in the schedule to the plaint and recover arrears of rent in a sum of Rs. 83,000/- and continuing damages at Rs. 10,000/- per month from 01.12.1999 until Plaintiff is placed in possession. The premises in dispute was a business premises. It was pleaded in the plaint that the monthly rental was Rs. 1000/- per mensem and the premises in question was 'excepted premises'. It was also pleaded that the rental was in arrears since June 1993 and Defendant had put up an unauthorised structure in or about 1994. Notice to quit

was sent on 18.10.1999 to terminate tenancy and hand over vacant possession on or before 01.02.1999 with damages fixed at Rs. 10,000/- as aforesaid.

Defendant party takes up the position that the premises in dispute is subject to the provisions of the Rent Act No. 7 of 1972 and that the Defendant is a statutorily protected tenant. Defendant denies of any arrears of rental or that he constructed an unauthorised constructions. He also takes up the position that the termination of tenancy is contrary to Act No. 7 of 1972 and tenancy has not been properly terminated. It is also pleaded that since Plaintiff refused to accept rent, he deposited rent at the Maharagama Pradeshiya Sabha. Parties proceeded to trial on 22 issues and 6 admissions. It was admitted that the rent was Rs. 1000/- per month and the premises in question was a business premises, situated with the Town Council area which is at present within the Maharagama Pradeshiya Sabhawa. It was submitted that the Defendant was the Plaintiff's tenant and M.C. Gangodawila Case No. 5246 was filed.

The material submitted to this court indicates that the Plaintiff succeeded in the District Court and in the High Court. The issues raised in the lower court suggest that the crucial issues were whether the premises in disputes were excepted premises, or that the premises in question was subject to the provisions of the Rent Act No. 7 of 1972. The other matter of some

importance is whether tenancy was properly terminated, and Defendant failure to hand over vacant possession by 20.11.1999.

Supreme Court granted Leave on the following questions of law.

1. Whether their Lordships Judges have erred in law by not considering the fact that according to certified copy of the annual assessment in respect of the said premises in 1988 the annual value of the said premises is less than the relevant amount according to the provisions of the Rent Act?
2. Whether their Lordships Judges have erred in law by misinterpreting the sections 2(4), 2(5) and the schedule of the Rent Act?
3. Have the Hon. Judges when arriving at the final conclusion considered the question of arrears of rent.
4. Whether there was a cause of action based on arrears of rent?
If not, whether the Judgments of both District Court and High Court erroneous.

In the case in hand the most important question to be decided is whether the premises in dispute is an 'excepted premises' as per the Rent Act. As such before I proceed to analyse the evidence and Judgments of the lower court, I prefer to consider the following matters on the question of excepted premises, gathered mainly from authorities and statute.

Section 2(4) of the Rent Act provides if the Rent Act is in operation in any area provisions of the Act applies to all premises other than excepted premises. Section 2(5) states that regulation in the schedule to the Act has the effect of determining that the premises shall be 'excepted' premises. The schedule to the Act gives a chart. Column (1) describes the Local Authority area. Municipality, Town Council etc. and Column II gives the annual value. If the annual value exceed the specified figure in Column (II), it is deemed to be excepted premises, and January 1968 value is also relevant. In *Plate Ltd Vs. Ceylon Theatres Ltd* 75 NLR at 129 per Samarawickrema J. It was the intention of the legislature not to exercise control over a certain category of premises. The premises of that kind were deliberately regarded by the legislature as falling outside the scope of the objects of policy which necessitated the protection of tenants in certain circumstances. The annual value in excess of the amount set out in the schedule is assessed by the Local Authority.

In *Podisinghe Vs. Perera* 75 NLR 333. *Wimalaratne J.* held. Annual value for the time being simply means, in my view, the annual value at the time of institution of the action, irrespective of the fact that any objection has been taken to it.

The burden of proof is placed very fairly and squarely on the party who asserts that the premises in question are "excepted premises". In

Muttucumaru Vs. Corea.n59 NLR 525 Plaintiff sued the Defendant alleging that the premises were “excepted premises within the meaning of the Rent Act. Notice to quit was admitted, and the only question on which the parties went to trial related to the issue whether the premises in suit were “excepted premises” within the frame work of the Rent Act. Sinnatamby J. declared: “the burden of proof no doubt was on the Plaintiff to establish that the premises are “excepted”.

I have examined the evidence led at the trial and the two Judgments of the lower courts. Plaintiff in her evidence inter alia states as per P2 (annual value) was 4912/- in 1989 and thereafter the annual value rose to Rs.10,294/-. Quit Notice and registered postal article was produced as P6 and P6(a). It was her father who was the land-lord and on his demise her mother collected rents. The Mother’s death resulted her becoming the owner and land-lord. It was her father that gave the premises on lease to the Defendant. The building in question was in existence since 1970 and it was admitted that Plaintiff did not produce extracts of annual value from 1970 to 1980. Plaintiff’s position was that documents were destroyed in 1988 due to communal violence. Plaintiff denied that the annual value was 396/- in the year 1988. The defence in cross examination of the Plaintiff witness confronted her (witness) with the rates extracts from 1988 onwards and produced same as V1. In cross-

examination it is permissible to mark and produce documents to contradict the witness (Section 175(2) proviso) Civil Procedure Code.

This being a very relevant item of evidence I wish to incorporate the items of evidence elicited by the defence to prove document V1 and establish that the annual value in 1988 was Rs. 396 (cross-examination of Plaintiff witness).

ප්‍ර : මහත්මයාට වි. 1 දරණ ලේඛණය පෙන්වනවා.

මහත්මයාගේ පලපුරුද්ද අනුව කියන්න, මේ ලේඛණය මහරගම ප්‍රදේශය සභාව තිබූ කාලයේ ප්‍රදේශය සභාවෙන් නිකුත් කල ලේඛණයක්?

උ. මේක 2002 ජුනි මාසයේ නිකුත් කරන ලද ලේඛණයක්.

ප්‍ර. මේක මහරගම ප්‍රදේශය සභාවේ මහරගම-අවිස්සාවේල්ල පාරේ වරිපනම් අංක 72 ට අදාලව නිකුත් කරපු වාර්ෂික තක්සේරු වාර්තාවක්?

උ. ඔව්. එහෙම කියන්න පුලුවන්.

ප්‍ර : මහත්මයා මහරගම නගරසභාව වෙන්න පෙර, මහරගම ප්‍රාදේශය සභාවේ සේවය කලාද?

උ. ඔව්.

ප්‍ර : මෙම වි. 1 දරණ ලේඛණය අනුව වරිපනම් අංක 72 දරණ ස්ථානය සඳහා 1988 වර්ෂයේ වාර්ෂික වටිනාකම සඳහන් කර තිබෙනවා?

උ. ඔව්.

ප්‍ර : වි. 1 අනුව පාරේ නම වශයෙන් සඳහන් වන්නේ අවිස්සාවේල්ල පාර?

උ. ඔව්.

අයිතිකරු බී. එම්. ඩී. විල්සන්

කොන්ක්‍රීට් වහල සහිත ගොඩනැගිල්ල සහ ඉඩම.

එහි වාර්ෂික වටිනාකම 396 කට තක්සේරු වෙලා තිබෙනවා.

උ. ඔව්.

මෙම ලේඛණ ආර්. ඩී පත්මලතා කියන අය අත්සන් කර තිබෙන්නේ. ඇය නවම සේවය කරනවා

ඇගේ රජකාරියේ කොටසක් මේ වරිපනම් සම්බන්ධව කටයුතු කිරීම.

ඇගේ අත්සන අදහන්න පුලුවන්.

චාන්දනි දැන් මහරගම නගර සභාවේ නැහැ. කලින් වරිපනම් කලේ එයා. මම ඇයවත් දන්නවා. ඇගේ අත්සනත් දන්නවා.

වි. 1 ලේඛණයේ අත්සන් මා හඳුනා ගන්නවා.

එසේම වි. 1 ලේඛණය මහරගම නගර සභාවෙන් හිකුත් කරන ලද ලේඛණ බවත් පිලිගන්නවා. එසේම එම වි. 1 ලේඛණය මහරගම-අවිස්සාවේල්ල පාරේ වරිපනම් අංක 72 දරණ ස්ථානයට හිකුත් කරන ලද ලේඛණ බවටත් පිලිගන්නවා.

ප්‍ර : 1989 වර්ෂයේ සිට මේ පරිශ්‍රය තක්සේරු කර වරිපනම් අංක 72 යි?

උ. ඔව්.

ප්‍ර : 1989 දී එහි වර්ෂික වටිනාකම රු 396/- යි?

උ. එහෙමයි

ප්‍ර : 1989 ට පෙර අංක 72 දරණ ස්ථානය ව්‍යාපාරික ස්ථානයක් වශයෙන් පැවතුම බව පිලිගන්නවාද?

උ. ඔව්.

ප්‍ර : 1988 දීත් එලෙස පැවතුණාද?

උ. ඔව්.

ප්‍ර : 1987 දී පැවතුණාද?

ප්‍ර : 1986, 1985, 1984, 1983 වර්ෂ වල ව්‍යාපාරික ස්ථානයක් වශයෙන් පැවතුන බව පිලිගන්නවාද?

උ. ඔව්.

The Appellant no doubt proved that the annual value was Rs. 396/- (V1) in the year 1988. The value of this item of evidence is more probable and legally admissible in cross-examination of Plaintiff's witness by the defence on the point suggested from document V1.

I have already discussed that the burden of proof, to prove that the premises in dispute is 'excepted' premises is on the Plaintiff-Respondent. Plaintiff party thought it fit only to produce the rates extracts as P2 from the year 1989. The first assessment of the premises in dispute according to law is not made known to court, by Plaintiff. There is evidence that the building in question was in existence even in the year 1970. I note the requirement of the Rent Act of 1972 to determine the premises as excepted premises. The schedule to the Act reads thus:

Any business premises (other than premises referred to in regulation 1 or regulation 2) situated in any area specified in Column 1 hereunder shall be excepted premises for the purposes of this Act if the annual value thereof as specified in the assessment made as business premises for the purposes of any rates levied by any local authority under any written law in force on the first day of 1968 or, where the assessment of the annual value thereof as business premises is made for the first time after the first day of January 1968, the annual value as specified in such assessment, exceeds the amount specified in the corresponding entry in Column 11:

1	11
Area	Annual Value
	Rs.
Municipality of Colombo	6,000
Municipality of Kandy, Galle or any other Municipality	4,000

Town within the meaning of the Urban Councils Ordinance	2,000
Town within the meaning of the Town Councils Ordinance	1,000

I have perused the case of *Wickremasinghe Vs. Atapattu 1986 (1)*

SLR 16

The plaintiff sued the defendant for ejectment of his tenant the defendant from premises let to him. The entire basis of the action was that the premises were business premises situated within the Town Council limits of Maharagama and excepted premises as the annual value was over Rs. 1,000. The defendant was not resident in the premises in suit but ran a private tutory in them.

Held –

The premises were business premises as a private tutory was being run there but for the plaintiff to succeed the burden was on him to prove that the premises were excepted premises within the meaning of the Rent Act. For this the plaintiff had to prove firstly that the premises were assessed as business premises for the purpose of rates levied by the local authority and secondly that the annual value was over Rs. 1000. All business premises of which the landlord is the Commissioner of National Housing or a local authority are also excepted premises. The premises in suit though of the annual value of over Rs. 1,000 had been assessed as residential premises. Hence the plaintiff's suit fails.

This court having examined the Judgments in the lower courts, it is unfortunate that both courts did not even attempt to consider document V1 produced in cross examination of Plaintiff. Nor can I find a clue on perusal of both Judgments as to whether the lower courts considered the relevant

provisions in the Rent Act, more particularly the schedule referred to above. That is the yard stick to determine 'excepted premises'.

The premises in dispute fall within the description of "town within the meaning of the Town Councils Ordinance, the annual value being Rs. 1000/- In the year 1988 the annual value was on Rs. 396/-. In fact there is material to establish that the building in question was in existence in the year 1970. It may be that the premises in dispute was in existence even prior to 1970. If that be so the Plaintiff is bound to produce the assessment register for the year 1970 or prior to 1970. The schedule referred to above under the Rent Act refer to the period January 1968. Plaintiff has miserably failed to provide the required proof to establish that the premises in dispute is an 'excepted premises'. Plaintiff has not discharged the burden of proof on this aspect. The premises in dispute does not fall within the description of 'excepted premises' in terms of the Rent Act. As such I set aside both Judgments of the District Court and the High Court and allow this appeal as per sub paragraphs 'c', 'd', 'e' & 'f' of the prayer to the petition. The questions of law are answers as follows:

(1) & (2) - yes in favour of the Appellant

(3) Yes, but in view of the answers to (1) and (2) above this answer does not favour the Plaintiff.

(4) In view of the fact that the premises are not excepted premises it does not arise.

Appeal allowed as above.

JUDGE OF THE SUPREME COURT

B.P. Aluwihare P.C., J

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera J.

I agree.

JUDGE OF THE SUPREME COURT