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

Abdul Cader Sabura Umma,
No. 9/2 (10/4),
Central Road,
Batticaloa.
Plaintiff-Appellant-Appellant

SC/APPEAL/112/2014
EP/HCCA/BC/06/2007
DC BATTICALOA 4413/96

Vs.

1. Puvenesweri Krishnamoorthie,
   (deceased)
2. Prishla Krishnamoorthie,
3. Manjula Krishnamoorthie,
4. Geetha Krishnamoorthie,
   (deceased)
   All of No. 92, Central Road,
   Batticaloa.
   2nd Defendant-Respondent-Respondent

Before: Hon. Justice Janak De Silva
Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere

Counsel: Thushani Machado for the Appellant.
K.V.S. Ganesharajan for the Respondent.

Written submissions on:

By the Appellant on 09.07.2025

By the Respondent on 21.07.2025

Argued on: 09.06.2025

Decided on: 10.10.2025

Samayawardhena, J.

The plaintiff instituted this action in the District Court of Batticaloa against the defendants seeking a declaration that they are the tenants of the plaintiff and ejectment of them from the premises in suit on the grounds of reasonable requirement and arrears of rent. In their answer, the defendants admitted that they were tenants but denied that the premises were reasonably required by the plaintiff or that arrears of rent were outstanding.

In paragraph 12 of the plaint, the plaintiff averred that she had given one month's notice terminating the tenancy. In paragraph 11 of the answer, however, the defendants specifically pleaded that, as tenants within the meaning of the Rent Act No. 7 of 1972, such one month's notice was invalid in law, and therefore the action could not be maintained. This matter was put in issue at the trial. It is significant that at no stage did the plaintiff contend that the premises were outside the ambit of the Rent Act.

After trial, the District Court dismissed the plaintiff's action on the ground that the notice to quit was not valid in law, holding that under section 22(6) of the Rent Act the plaintiff was required to give one year's notice.

On appeal, the High Court of Civil Appeal of Batticaloa affirmed the judgment of the District Court and dismissed the appeal. The present appeal, filed with leave of this Court, is against the judgment of the High Court. A previous bench of this Court granted leave to appeal on the following questions of law:

(a) Did the High Court of Civil Appeal misdirect itself in holding that the respondents were tenants, in view of their denial of the appellant's title?

(b) In any event, was the notice to quit valid in the circumstances of the case?

The first question suggests that the defendants denied the plaintiff's title. Even assuming that the defendants denied the plaintiff's title, they did not deny that they were tenants under the plaintiff. For the continuance of a landlord–tenant relationship, it is not necessary that the landlord be the owner of the premises. A valid tenancy agreement may come into existence even between a trespasser and another, though such an agreement would not bind the true owner.

There had also been a previous litigation (Case No. 3510/L) between the predecessors of the present parties. The plaintiff contends that in that action the defendants claimed ownership of the premises, which was not accepted by Court, and that the plaintiff's ownership was upheld. The plaintiff now argues that the defendants cannot approbate and reprobate by asserting ownership in the earlier case and tenancy in the present action.

If that was indeed the plaintiff's position, the proper course would have been to seek ejectment of the defendants in the earlier action itself. In this regard, section 34 of the Civil Procedure Code becomes relevant.

> *34(1) Every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the action within the jurisdiction of any court.*
>
> *(2) If a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of, his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. A person entitled to more than one*

remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the court obtained before the hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

(3) For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

The premises had been transferred by the predecessor of the plaintiff to the predecessor of the defendants by a deed, which the plaintiff stated was not an outright transfer but security for a loan. In the previous case, the Court held that the defendants held the premises in trust for the plaintiff, and directed the plaintiff to pay the sum borrowed from the defendants, together with interest, in order for the defendants to retransfer the premises to the plaintiff. According to the plaint in the present action, the plaintiff has not made that payment. Without discharging that obligation, the plaintiff instituted the instant action to eject the defendants on the basis of termination of tenancy. Such conduct is wholly unacceptable, as it amounts to an abuse of the judicial process and an attempt to harass the defendants through vexatious litigation.

Be that as it may, as I have already observed, the plaintiff instituted this action treating the defendants as tenants, seeking their ejectment on the grounds of reasonable requirement and arrears of rent. The defendants, while admitting their status as tenants, sought dismissal of the action on the ground that the notice of termination was invalid. When the plaintiff herself filed this action on the footing that the defendants were tenants, could she then have expected the defendants to deny tenancy and assert ownership, as she now contends, particularly in view of the previous litigation? Such a position is untenable and only serves to highlight the lack of clarity on the part of the plaintiff as to the very basis of her action. The

allegation that the defendants are approbating and reprobating is wholly misplaced; on the contrary, it is the plaintiff who is guilty of approbating and reprobating in this case.

At the time material to this action, section 22(6) of the Rent Act provided as follows:

> *Notwithstanding anything in any other law, the landlord of any premises referred to in subsection (1) or subsection (2) shall not be entitled to institute any action or proceedings for the ejectment of the tenant of such premises on the ground that such premises are required for occupation as a residence for himself or any member of his family, or for the purposes of his trade, business, profession, vocation or employment, if the landlord has not given to the tenant of such premises one year's notice in writing of the termination of the tenancy.*

As the law presently stands, following the Rent (Amendment) Act No. 26 of 2002, the period of one year's notice has been reduced to six months.

The plaintiff expressly admitted that she gave only one month's notice of termination. As rightly decided by both Courts below, the plaintiff did not give one year's notice of termination before she filed the action on reasonable requirement. It is well settled that the notice of termination stipulated under the Rent Act constitutes a condition precedent to the institution of an action, and failure to give the requisite notice is fatal to its maintainability. On the unique facts and circumstances of this case, the plaintiff cannot succeed in this action.

I answer both questions of law in the negative and dismiss the appeal with costs.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court