

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

*In the matter of an application for leave to appeal to
Supreme Court under and in terms of the Section 5
(c) of the High Court of the Provinces Act No. 19 of
1990 as amended by Act No. 54 of 2006.*

SC Appeal No. 67/ 2025

SC/HCCA/LA No. 399/2022

CA/HCCA/Kandy No. FA 158/2019

DC/Nuwaraeliya Case No. L/1353/08

Natchan Chandraras alias Kaththan

Natchchan Chandroo

No. 187, Mahinda Mawatha, Nuwara Eliya.

Plaintiff

Vs.

D. Nihal Rupasinghe,

No. 25, Hill Street, Nuwara Eliya.

(Deceased)

Defendant

Lillie Rupasinghe

No. 25, Hill Street, Nuwara Eliya.

Substituted Defendant

AND

Lillie Rupasinghe

No. 25, Hill Street, Nuwara Eliya.

Substituted Defendant- Appellant

Vs.

Natchan Chandraras alias Kaththan
Natchchan Chandroo
No. 187, Mahinda Mawatha, Nuwara Eliya.

Plaintiff- Respondent

AND NOW BETWEEN

Lillie Rupasinghe
No. 25, Hill Street, Nuwara Eliya.

Substituted Defendant- Appellant- Appellant

Vs.

Natchan Chandraras alias Kaththan
Natchchan Chandroo
No. 187, Mahinda Mawatha, Nuwara Eliya.

Plaintiff- Respondent- Respondent

Before: P. Padman Surasena J. (as His Lordship the Chief Justice was then)

Sobhitha Rajakaruna J.

Menaka Wijesundera J.

Counsel: Samantha Ratwatte, PC with Ms. Lalanika Kankanamge for the Substituted

Defendant- Appellant- Appellant.

K.V.S. Sri Ganesharajan with Ms. Vithusha Loganathan for the Plaintiff-

Respondent- Respondent

Argued on: 03.04.2025

Decided on: 04.09.2025

Sobhitha Rajakaruna J.

The Plaintiff-Respondent-Respondent (hereinafter sometimes referred to as the 'Plaintiff') instituted action, upon an Agreement marked 'P2', in the District Court of *Nuwaraeliya* against one D. Nihal Rupasinghe, who was the original Defendant in the said case. After the demise of the said Nihal Rupasinghe ('original Defendant'), the Substituted Defendant-Appellant-Appellant (hereinafter sometimes referred to as the 'Defendant') was substituted in place of the said original Defendant. The Defendant in her Amended Answer made a Claim in Reconvention. The learned District Judge delivering the Judgement dismissed the action as well as the Claim in Reconvention. Being aggrieved by the said Judgement, the Defendant lodged an appeal in the High Court of *Nuwaraeliya*, whereas there was no appeal from the Plaintiff. The learned High Court Judge affirmed the Judgement of the District Court, subject to a variation.

Thereafter, the Defendant and the Plaintiff filed separate leave to appeal applications bearing Case Nos. SC/HCCA/LA/399/2022 and SC/HCCA/LA/403/2022 respectively, in this Court. When such matters were taken up for consideration of granting of leave, both the above cases were amalgamated. Having considered the submissions of learned counsel, the Court decided to grant leave to appeal in respect of the questions of law set out in paragraphs 26(1), 26(2) and 26(4) in the Petition dated 20.12.2022 filed in the said Case No. SC/HCCA/LA/399/2022.

Consequently, on the same day, in terms of the Proviso to Rule 16(1) of the Supreme Court Rules (1990), this Court proceeded to hear the instant Appeal forthwith, with the consent of the Attorneys-at-Law of all the parties.

Surrounding Circumstances

The Plaintiff has averred in the Complaint that the original Defendant became the owner of the subject property morefully described in its 1st Schedule by way of the Deed of Transfer No.

8505 marked 'Pa 1'. The said subject property which is in extent of A:00 R:00 P:17.8 includes a two-story building-premises bearing assessment No. 24 and No.25. Moreover, the Plaintiff alleges that the original Defendant agreed to sell the ground floor of the said subject property for a consideration of Rs. 2,700,000 and accordingly, he entered into the said Agreement, dated 02.11.2006, marked 'Pa 2', with the original Defendant and the Substituted Defendant-Appellant-Appellant. As per the terms and conditions of the said Agreement, the Defendant, together with her husband (the original Defendant), accepted a sum of Rs. 500,000 on the same date as partial payment of the total purchase price. The above averments of the Plaintiff have been admitted by the Defendant in her Amended Answer.

The Plaintiff, in view of the said Agreement marked 'Pa 2', undertook to pay the balance purchase price (Rs. 2,200,000) on or before 25.03.2007. In terms of Clause 9 of 'Pa 2', the Defendant is entitled to cancel the Agreement with notice in writing in the event the Plaintiff breaches any of its terms or conditions. Similarly, it is stipulated that 25% of the advance payment will be forfeited should the Plaintiff fail to comply with the Agreement's obligations. The said Agreement marked 'Pa 2' contains several spelling mistakes or typographical errors, but its contents remain comprehensible upon plain reading.

The Plaintiff states that he moved into the downstairs unit of the said premises on the same day the Agreement 'Pa 2' was signed. According to the Defendant, the Plaintiff was permitted to occupy the said downstairs unit purely upon the confidence placed in him, although the Defendant was only obliged to transfer the possession of the said premises after the conditions of the said Agreement were fully met. It is noted that there is no specific provision in the said Agreement which permits the Plaintiff to occupy the premises until he fulfils his obligations under the Agreement. Despite making several subsequent payments to the Defendant, the Plaintiff did not complete, as agreed, the total transaction by 25.03.2007. As such the Defendant has not taken steps to transfer the property to the Plaintiff. Accordingly, in the District Court, the Plaintiff has prayed for an order of the court compelling the Defendant to transfer possession of the property upon receipt of the outstanding balance of Rs. 1,200,000.

The Defendant states that the subject premises were duly gifted to her by her husband through the Deed of Gift No.10165, attested by S. Daimanuwan Notary Public, on 24.11.2000. As a result, the learned District Judge in his Judgement dated 21.02.2019

noted that the original Defendant no longer held title to the property at the time of instituting the action and that the Plaintiff failed to explain why the wife of the original Defendant (now the Substituted Defendant-Appellant-Appellant) was substituted. In those lines, the learned District Judge decided that the Plaintiff was not entitled to the relief as prayed for in the prayer of the Plaint, specifically because the said Substituted Defendant-Appellant-Appellant was the rightful owner of the subject premises. Anyhow, the learned District Judge transitioning to another area has decided that the Plaintiff has a right to occupy the premises until the Defendant repays the sum of Rs.1,500,000.

The District Court dismissed both the Plaintiff's action and the Defendant's Claim in Reconvention. In the appeal, the High Court has affirmed the judgment of the District Court, subject to a variation in the said Judgement concerning the granting of *jus retentionis* (Latin legal term that translates to 'right of retention') to the Plaintiff until the Defendant repays the said amount of money.

Questions of Law

This Court, considering the applications filed by the Defendant and the Plaintiff challenging the aforementioned Judgement of the High Court, granted leave to appeal on the following questions (outlined in paragraphs 26(1),26(2) and 26(4) in the Petition dated 20.12.2022):

- (1) Have the learned High Court Judges failed to appreciate that the Respondent was a licensee of the original Defendant?
- (2) Is ownership of a licensor irrelevant to eject an overholding licensee?
- (3) Should the High Court have granted the relief of ejectment of the Respondent as a lesser relief in all?

Have the learned High Court Judges failed to appreciate that the Respondent was a licensee of the original Defendant?

It is abundantly clear that the Plaintiff instituted the said action in the District Court of Nuwaraeliya on the footing of the said Agreement marked 'Pa 2' which established a contractual relationship between the parties. It is a cardinal obligation on the part of the

Plaintiff to complete the payment of the total purchase price on or before 25.03.2007, a condition which the Plaintiff has not fulfilled. Anyhow, at the time of instituting the action, the Plaintiff expresses through his plaint dated 08.04.2008 that he is prepared to pay the balance of Rs.1,200,000 to the Defendant at any moment. The stand taken by the Defendant was that no steps were taken to transfer the ownership to the Plaintiff as the Plaintiff did not complete the payment of the total purchase price by the deadline of 25.03.2007.

It is undisputed that the Plaintiff failed to complete the transactions in terms of the provisions of the said agreement 'Pa 2', leading to a prima facie assumption that the Plaintiff breached the said Agreement. As noted above, the Defendant was not obliged in terms of the provisions of the said Agreement to transfer the possession of the subject premises on the date the Agreement was signed. No substantial reasons were given in evidence during the trial by the Plaintiff to explain or justify the failure to pay or the delay in settling the remaining balance.

The learned District Judge has correctly observed that the Substituted-Defendant-Appellant-Appellant became the owner of the subject premises by virtue of the said Deed of Gift No.10165 (marked 'Vi 2') even before instituting the action in the District Court. One of the purported grounds for the learned District Judge to dismiss the action was that the Plaintiff sought relief only against the original Defendant, rendering the Plaintiff ineligible to enforce the Agreement 'Pa 2' (Vide - issue No. 15,16 and 18 framed at the Trial). The judgment of the District Court focused on the Plaintiff's failure to directly sue the true owner at the time the action was filed, emphasising that the Plaintiff neglected to name the Substituted Defendant-Appellant-Appellant as the original Defendant, thus omitting necessary parties at the outset. Nonetheless, I take the view that the learned District Judge has arrived at such findings regarding the necessary parties without providing any rationale. The learned High Court Judge has not intervened in the relevant portion of the Judgement of the District Court.

The learned District Judge, in addition to his above conclusion, dismissed the said Claim in Reconvention, citing the Defendant's failure to substantiate the loss allegedly caused to the building with evidence. In the claim raised in reconvention by the Defendant, a sum of Rs. 2,000,000 is sought from the Plaintiff for the alleged damages caused to the house, particularly the staircase providing access to the upstairs unit from within the property.

The learned District Judge, answering the respective issues, decided that the Defendant did not prove such damages. Upon perusal of the evidence adduced during the examination in chief of the Defendant in the Trial Court, it is observed that the Defendant submitted only 5 documents. Three of those documents are complaints made to the Police, whereas the other document is the aforesaid Deed No.10165 ('Vi 2'). Besides the documentary evidence, the Defendant has not supported her claim with additional independent evidence or witnesses. Consequently, I agree with the learned District Judge that the Defendant has not met the burden of proof to establish the alleged damages on a balance of probability. The learned High Court Judge has not interfered with the findings of the District Court regarding the loss and harm allegedly caused to the Defendant.

Having dismissed the Plaintiff's action, the learned District Judge has arrived at another finding that the Plaintiff is entitled to remain in possession of the subject premises until the Defendant repays a sum of Rs. 1,500,000 (being the calculated amount of money accepted by the Defendant upon the Agreement 'Pa 2'). I am unable to identify any specific issue formulated by the District Court to support these findings. However, the High Court determined that the findings of the District Court on *jus retentionis* were erroneous. The *jus retentionis* denotes the right of an individual to hold onto another person's property until a debt or obligation tied to that property is fulfilled. Unlike certain liens, it generally does not provide the authority to sell the property, only to keep possession of it. Moreover, the High Court set aside the portion of the District Court's judgment that had granted the Plaintiff *jus retentionis*. The learned High Court Judge, placing reliance on the judgment of ***Surangi v Rodrigo 2003 3 Sri LR 35***, decided that the grant of *jus retentionis* was unsustainable in both fact and law. The learned High Court Judge noted that the Plaintiff had neither sought such relief in the Complaint nor raised it as an issue during the trial. Furthermore, he opined that such relief was not permissible in view of the findings of the learned District Judge on issues bearing Nos. 14th - 16th and 27th - 30th.

Nevertheless, the learned High Court Judge noted that neither the original Defendant nor the Substituted Defendant-Appellant-Appellant sought any relief in their Answer or Amended Answer on the grounds that the Plaintiff occupied the disputed property under the leave and license of the original Defendant. Further, the learned Judge of the High Court has taken the view that the original Defendant was not legally entitled to any relief on such "strange" grounds as this claim was neither raised through pleadings nor addressed by framing a specific issue during the proceedings. The Defendant argues that

both the original Defendant and the Substituted Defendant-Appellant-Appellant consistently viewed the Plaintiff as a licensee. The Defendant contends that, due to the Plaintiff's failure to meet the conditions of Agreement 'Pa 2' or complete the sale as stipulated, the leave and license granted to the Plaintiff were automatically revoked. The Defendant asserts that an individual who takes possession under an 'agreement to sell' holds the status of a licensee. Consequently, the Defendant claims that the learned High Court Judge erred in both law and fact.

It is important to note that no specific issue has been framed at the trial to determine whether the Plaintiff occupied the subject premises under a leave and license granted by the Defendant. However, the issue No.23 framed on behalf of the Defendant queries whether the Plaintiff has the legal right to remain on the subject property, to which the learned District Judge responded that the Plaintiff does have a legal right. It is a puzzle how the Trial Judge dismissing the Plaintiff's action answered the said issue No.23 in favour of the Plaintiff. As previously stated, the Plaintiff fails to offer sufficient justification for his right to continue occupying the property, given that he breached the conditions outlined in Agreement 'Pa 2'. The prescriptive title is not an issue in the action before the District Court, but the whole claim of the Plaintiff derives from the Agreement marked 'Pa 2'. I am of the view that there is no additional evidence which provides the Plaintiff potential legal entitlement to possess the property beyond the contractual relationship outlined in Agreement 'Pa 2'.

Notably, no evidence was presented during the trial to suggest that the Plaintiff's possession was based on any basis other than the Agreement marked 'Pa 2'. On the other hand, there is no mutual acknowledgement between the Defendant and the Plaintiff, who are in occupation of each other's rights and duties for the period until the contractual obligations under 'Pa 2' are fully and effectively fulfilled. It is observed that the said agreement cannot now be enforced in law due to the failure of the Plaintiff to meet the conditions therein. The evidence led by the Defendant at the Trial stating that he allowed the Plaintiff to occupy the premises on trust has not been effectively contradicted by the Plaintiff. Hence, I take the view that the learned High Court Judge has failed to consider the factual circumstances surrounding the permission granted by the original Defendant (or the Substituted Defendant-Appellant-Appellant) for the Plaintiff to enter in to the possession of the ground floor unit of the subject premises on the day of the said Agreement. In the circumstances, I take the view that the Plaintiff has no legal right to be

in possession of the subject property, given that he has admittedly failed to meet the conditions of the said Agreement. Therefore, the issue No.23 formulated during the Trial should be answered by concluding that the Plaintiff has no right to remain in possession of the property.

Thus, I take the view that the learned High Court Judge's conclusion that the issue of leave and license was "strange" to the case was deemed a legal error because it failed to consider evidence tied to Agreement 'Pa 2.' It misapplies or misinterprets the law in reaching a decision on leave and licence as well as on the principles relating to "approbation and reprobation" (the terms used by the learned High Court Judge). Based on the foregoing reasons, I agree only with the analysis regarding *jus retentionis* and the corresponding portion of the High Court Judgment that varied the District Court's decision. However, I am unable to accept the other component of the Judgment of the High Court, particularly its conclusions regarding whether the Plaintiff occupied the property under a leave and license granted by the Defendant. Considering the totality of evidence and circumstances, I answer the 1st question of law in the affirmative.

Is ownership of a licensor irrelevant to eject an overholding licensee?

The learned District Judge recognized that the Defendant was the true owner of the subject premises by the time the action was filed in the District Court. The title to the said property was established by the Defendant through the said Deed No. 10165 marked 'Vi 2', which the Plaintiff did not contest.

Shirani Bandaranayake J. in the aforesaid ***Reginald Fernando v Pabilinahamy and Others (substituted) (2005) 1Sri LR 31***, observed that a long line of cases had considered the above question and the ruling by the majority decision in ***De Alwis v. Perera 52 NLR 433*** had been consistently followed in subsequent decisions. Discussing the question of lack of any '*ius in re*' in *Landlord and Tenant* (Lake House Publishers, pp. 215-223), Prof. G. L. Peiris states that 'no real right in the premises need be claimed by the landlord'. Furthermore, the Plaintiff has placed reliance on the dicta of the Judgements in ***M.M.M. Ashar v T.H. Kareem SC/Appeal/171/2019, SC Minutes of 22.05.2023*** and ***Mohamadu Abu Sali v Ummu Kaldun SC/Appeal/225/2014, SC Minutes of 30.01.2024***. In the said case of ***M.M.M. Ashar***, His Lordship Justice Mahinda Samayawardhena held:

“In a declaration of title action which is not a rei vindicatio proper and which is filed against a defendant such as a licensee or a tenant to recover possession, the plaintiff need not prove title to the land against the defendant. In such actions, the title is presumed to be with the plaintiff.

Put differently, the defendant in such actions cannot frustrate the plaintiff's action on the basis that the plaintiff is not the owner of the property.

The present action is not a rei vindicatio action proper but a declaration of title action. Hence, the High Court is clearly wrong to have set aside the judgment of the District Court on the basis that the plaintiff does not have title to the entirety of the land but only to 11/12 shares of the land.

Once the Court decides that the defendant is a licensee of the plaintiff, and his prescriptive title is unsustainable, whether the plaintiff is the owner of the entire land or part of it or has no title at all is irrelevant.”

The Supreme Court in the said **Mohamadu Abu Sali** case decided that:

“The lessee cannot question the lessor's right, title or interest in the premises for the latter to lease it out to him. The reason being that a person need not necessarily be the owner of the premises to enter into such an agreement with another. Even in the absence of ownership, these agreements establish valid legal relationships such as landlord and tenant, lessor and lessee, licensor and licensee between the parties, although they may not be binding on the actual owner. (Professor George Wille, Landlord and Tenant in South Africa, 4th Edition, page 20; Dr. H.W. Tambiah, Landlord and Tenant in Ceylon, page 48; Imbuldeniya v. De Silva (1987] 1 Sri LR 367 at 372, 380, Gunasekera v. Jinadasa [1996] 2 Sri LR 115 at 120; Pinona v. Dewanarayana [2004] 2 Sri LR 11)”

His Lordship Justice Mahinda Samayawardhena in the above case has referred to the following paragraph in the Court of Appeal Judgement of **Ruberu and Another v Wijesooriya (1998) 1 Sri LR. 58**:

“whether it is a licensee or a lessee, the question of title is foreign to a suit in ejectment against either. The effect of the operation of section 116 of the Evidence Ordinance is that if a licensee desires to challenge the title under which he is in occupation he must, first, quit the land. The fact that the licensee or the lessee obtained possession from the plaintiff-appellant is

perforce an admission of the fact that the title resides in the plaintiff. No question of title can possibly arise on the pleadings in this case, because, as the defendant-respondent has stated in his answer that he is a lessee under the plaintiff-appellant, he is estopped from denying the title of the plaintiff-appellant. It is an inflexible rule of law that no lessee or licensee will ever be permitted either to question the title of the person who gave him the lease or the licence or the permission to occupy or possess the land or to set up want of title in that person, i.e. of the person who gave the licence or the lease. That being so, it is superfluous, in this action, framed as it is on the basis that the defendant-respondent is a licensee, to seek a declaration of title."

Drawing on the precedents set forth in the referenced judgments, it is firmly established that when a claimant initiates an action based on a leave and license or landlord-tenant relationship, and proves that he is the licensor or landlord while the other party is his licensee or tenant, the claimant is entitled to eject the said other party in possession, regardless of whether he owns the property. Thus, I will answer the 2nd question of law in the affirmative.

Should the High Court have granted the relief of ejectment of the Respondent as a lesser relief in all?

The Defendant contends that the learned High Court Judge should have at least granted the lesser relief of ejectment, even if the declaration of title sought in the Amended Answer's prayer was not awarded for some reason. The Defendant further argues that the High Court should have allowed the ejectment of the Plaintiff, as the Defendant's crossclaim was premised on the leave and license granted to the Plaintiff. The Defendant, in seeking a declaration of title, contends that such a declaration does not confer additional rights on the licensor but is rooted in the contractual relationship, confirming that the licensee cannot dispute the licensor's title that permitted possession.

In the Amended Answer under the heading 'Cross Claim', the Defendant averred that the Plaintiff has been demanded to vacate the premises through her lawyers by a notice dated 09.05.2008, a date prior to filing the Answer by the original Defendant. Although the Defendant did not present this notice as evidence during the Trial, an issue (particularly issue No. 26) was formulated to confirm that the Defendant had sent an eviction notice as referenced in paragraph 7(h) of the Amended Answer. Similarly, in the Prayer of the

Amended Answer, the Defendant has prayed for a declaration of title and an order to eject the Plaintiff from the subject premises. The final issue (issue No. 31) framed in the District Court addressed whether the Defendant was entitled to the reliefs prayed for in the Amended Answer if one or more of the Defendant's issues were answered in favour of the said Defendant. The learned District Judge answered the above issue No.26 in favour of the Defendant, but answered the said issue No. 31 against her.

As mentioned previously, the Plaintiff has failed to establish under what authority he remains in possession. These circumstances envisage that the Defendant granted the Plaintiff leave to possess the property upon grounds not limited to the contractual relationship under 'Pa 2'. The Plaintiff was not successful in denying or disputing such mode of leave and license granted to him, including the demand of the Defendant terminating such leave and license, with adequate material. Therefore, I am compelled to arrive at the conclusion that the Plaintiff remains in possession under leave and license, not strictly limited to the provisions of 'Pa 2', and he has not adequately countered the eviction demand raised as an issue during the trial. Having answered the 2nd question of law in the affirmative and also based on the findings in this Judgement, I hold that the Defendant is entitled to the relief in respect of eviction as prayed for in the Amended Answer, allowing the Plaintiff's eviction from the subject premises. For the reasons set forth above, I will answer the 3rd question of law in the affirmative.

Conclusion

In the above circumstances, I proceed to affirm the judgment of the District Court, except for its findings on issue No. 23, which should be answered as concluding that the Plaintiff has no legal right to remain in the subject premises. Due to the observations I made previously, I have my reservations about the reasons given by the District Court for deciding to dismiss the action. Anyhow, taking into account the entirety of the evidence and circumstances, along with the fact that the Plaintiff did not file an appeal, I concur with the District Judge's decision to dismiss the action. Furthermore, the Judgment of the District Court should be varied in respect of issue No. 31 to reflect that the Defendant is entitled to the relief as prayed for in the Prayer of the Amended Answer, but only to the extent of dismissing the action and ordering the eviction of the Plaintiff. The High Court's judgment is hereby partially upheld, except for the obiter remarks made by the learned

High Court Judge concerning the issues of (i) leave and license and (ii) approbation and reprobation.

In addition to the above, I must draw my attention to the journal entries dated 15.03.2024 and 03.04.2025, in which it has been recorded that the Defendant's commitment to repay a sum of Rs. 1,500,000 to the Plaintiff in the event of the Plaintiff's eviction from the premises in suit. Considering such undertaking of the Defendant, the Court, with the concurrence of the learned Counsel of both parties, terminated the proceedings of the Case No. SC/HCCA/LA/403/2022. Therefore, this Court directs the Defendant to comply with such undertaking once a decree is entered into by the District Court in accordance with the determinations of this Judgment. Accordingly, the Appeal is allowed without cost.

Judge of the Supreme Court

P. Padman Surasena, CJ.

I agree.

Chief Justice

Menaka Wijesundera J.

I agree.

Judge of the Supreme Court