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

In the matter of an Application for Leave to Appeal under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended read with Articles 127 and 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. Appeal No. 40/2015

S.C. Application No.
SC/HCCA/LA/381/2012

High Court No.
SP/HCCA/KAG/736/2010

D.C. Kegalle Case No. 6334/L

Ihala Hewage Don Bonny Jayaratne,
Batuwatta,
Helamada.

PLAINTIFF

Vs.

Kusum Pokunage Premadasa,
Batuwatta,
Helamada.

DEFENDANT

AND BETWEEN

Ihala Hewage Don Bonny Jayaratne,
Batuwatta,
Helamada.

PLAINTIFF – APPELLANT

Vs.

Kusum Pokunage Premadasa,

Batuwatta,

Helamada.

DEFENDANT - RESPONDENT

AND NOW BETWEEN

Ihala Hewage Don Bonny Jayaratne,

Batuwatta,

Helamada.

PLAINTIFF – APPELLANT – APPELLANT

Vs.

Kusum Pokunage Premadasa,

Batuwatta,

Helamada.

DEFENDANT – RESPONDENT - RESPONDENT

BEFORE : **Yasantha Kodagoda, P.C., J.**

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

Janak De Silva, J.

COUNSEL : Vidura Gunaratne with R.J. Upali de Almeida for the Plaintiff – Appellant – Appellant

Sudarshani Coorey for the Defendant – Respondent – Respondent

WRITTEN SUBMISSIONS : 02.04.2015 by Plaintiff – Appellant – Appellant

02.03.2016 by Defendant – Respondent – Respondent

ARGUED ON : 27.10.2022

DECIDED ON : 12.09.2025

Janak De Silva, J.

The Plaintiff-Appellant-Appellant (Appellant) instituted this action seeking a declaration of title to the land and premises more fully described in the schedule to the plaint (corpus) and ejectment of the Defendant-Respondent-Respondent (Respondent) from the corpus.

According to the plaint, the Appellant derived title to the corpus from H.J.R.V. Perera upon deed of transfer No. 689 dated 19.11.1998 (P2). The Appellant contended that the Respondent was in unlawful occupation of the corpus from 19.11.1998.

The Respondent claimed that he was the lessee of the corpus in terms of lease agreement No. 11348 (D3/E1) dated 17.09.1992 executed by H.J.R.V. Perera and that upon its expiration, he became a statutory tenant.

The parties proceeded to trial on the following issues:

පැමිණිල්ලේ විසඳිය යුතු ප්‍රශ්ණ:-

01.පැමිණිල්ලේ උප ලේඛණයේ විස්තර කර ඇති ඉඩම සහ පරිශ්‍රය පැමිණිල්ලේ සහ උත්තරයේ සඳහන් වන ජේ. ආර්. ඩබ්ලිව්. පෙරේරා යන අයට හිමි වී තිබුණාද ?

02. එකී පෙරේරා යන අය එම ඉඩම පැමිණිල්ලේ දැක්වෙන ආකාරයට 98.11.19 වැනි දින අංක 689 දරණ ඔප්පුව මත පැමිණිලිකරුට පවරා ඇත් ද ?

03. විත්තිකරු 98.11.19 වැනි දින සිට එහි නීතිවිරෝධී ලෙස භුක්තියේ රැඳී සිටින්නේ ද ?

04. ඉහත විසඳිය යුතු ප්‍රශ්ණ, පැමිණිල්ලේ වාසියට විසඳේ නම් පැමිණිල්ලේ ආයාචනය කර ඇති පරිදි සහන පැමිණිලිකරුට ලබාගත හැකිද ?

විත්තියේ විසඳිය යුතු ප්‍රශ්ණ:-

05.විත්තිකරු 1992.9.27 වැනි දින අංක 11348 දරණ බදු ඔප්පුව පිට උත්තරයේ උප ලේඛනයේ සඳහන් කර තිබෙන ඉඩම සහ පරිශ්‍රය වර්නන් පෙරේරාගෙන් බදු ගත්තේ ද ?

06.එම බදු කාල සීමාව අවසන් වූ පසු මෙම විත්තිකරු එම පරිශ්‍රයේ ස්ථාපිත කුලීකරු වූවා ද ?

07. එසේ නම් උත්තරයේ ආයාචනය අනුව නඩු තීන්දුවක් විත්තිකරුට ලබාගත හැකිද?

The learned trial judge granted a declaration that the Appellant was the owner of the corpus. However, he refused to grant ejectment and damages although he held that the Respondent had failed to establish that he was a statutory tenant. The learned trial judge further held that the Appellant failed to establish a cause of action as no evidence was led that the Respondent was in unlawful occupation. He went on to hold that if the Respondent was in unlawful occupation of the corpus after the end of the lease with H.J.R.V. Perera, it was H.J.R.V. Perera who should have instituted action or in the alternative he should have been added as a necessary party to this action.

The Appellant appealed to the Civil Appellate High Court of the Sabaragamuwa Province holden in Kegalle (High Court). The High Court concluded that the Respondent had entered into possession of the corpus as a licensee of H.J.R.V. Perera and remains as same to the date of the action. It was held that the Respondent did not have an adverse claim against H.J.R.V. Perera and that he was a monthly tenant. Moreover, it was held that the Appellant had failed to establish that the two boutique rooms leased by H.J.R.V. Perera to the Respondent were situated within the corpus.

Leave to appeal has been granted on the following questions of law:

(1) Did the High Court err in not recognising the principle that upon admission of, or proof of, the title of a Plaintiff in a *rei vindicatio* action, the onus shifts to the Defendant to prove that he is in lawful occupation?
(2) Did both Courts err in holding that 'a cause of action' has not accrued to the Appellant in the circumstances of this case?
(3) Did both Courts err in not recognising that a Plaintiff in a vindicatory action need only prove that he is the owner of the land in question and that the Defendant is in possession of it?
(4) Was the High Court in error when it ignored the conclusion reached by the Court below that the Respondent had failed to prove 'statutory tenancy'?
(5) Did the High Court fail to grant the reliefs prayed for by the Petitioner in view of the fact that the concept of statutory tenancy being the only defence of the Respondent was not upheld by the District Judge?
(6) Is a person who over-stays the period of his lease entitled to a notice to quit?

Question of Law Nos. 1 and 3

The Appellant claimed to be the owner of the corpus and that the Respondent was in unlawful possession of it. On the strength of the title pleaded, the Appellant sought a declaration of title and ejectment of the Respondent and those claiming under him. This is clearly a *rei vindicatio* action.

In a *rei vindicatio* action, the Plaintiff must prove that he is the owner of the land in question and that the land is in the possession of the Defendant **[*Luwis Singho and Others v. Ponnamperuma* (1996) 2 Sri LR 320 at 324; *Wijetunge v. Thangarajah* (1999) 1 Sri LR 53 at 55]**. Even a purchaser who had not been placed in possession can bring this action **[Voet 6.1.3; *Punchi Hamy v. Arnolis* (1883) 5 SCC 160]**. Nor is it a bar that the plaintiff's vendor had no possession.

The learned trial judge granted a declaration that the Appellant is the owner of the corpus. The High Court did not set aside this finding. Indeed, it could not have in the absence of an appeal by the Respondent or the filing of a cross objection by him in terms of Section 772 of the Civil Procedure Code.

Nonetheless, the High Court, at page 2 of its judgment, held that it is settled law that in a vindicatory action the burden of proof is solely on the plaintiff and not on the defendant. This is an erroneous statement of law, in view of the finding of the learned trial judge that the Appellant is the owner of the corpus.

Where the legal title to the corpus is proved, the burden of proof is on the Respondent to show that he is in lawful possession **[*Theivandran v. Ramanathan Chettiar* (1986) 2 Sri LR 219 at 222; *Wijetunge v. Thangarajah* (1999) 1 Sri LR 53 at 55; *Candappa Nee Bastian v. Ponnambalampillai* (1993) 1 Sri LR 184 at 187; *Beebi Johara v. Warusavithana* (1998) 3 Sri LR 227 at 228]**.

Accordingly, I answer question of law Nos. 1 and 3 in the affirmative.

Question of Law No. 4

The High Court concluded that the Respondent was a monthly tenant and that he should have been given a month's notice to quit. I am unable to accept this conclusion. The High Court could not have proceeded to examine this issue.

The Respondent in his answer claimed that he was a statutory tenant. Issue No. 6 was raised on this basis. The learned trial judge concluded that the Respondent had failed to prove that he was a statutory tenant and answered issue No. 6 as *not proved*. Hence his conclusion was that the Respondent failed to prove that he was a statutory tenant.

The Respondent did not appeal. Neither did he file a cross objection in terms of Section 772 of the Civil Procedure Code which states that any respondent, though he may not have appealed against any part of the decree, may, upon the hearing, not only support

the decree on any of the grounds decided against him in the court below, but take any objection to the decree which he could have taken by way of appeal, provided he has given to the appellant or his registered attorney seven days' notice in writing of such objection.

In ***Jagathasena and Others v. G.D.D. Perera, Inspector, Criminal Investigation Department and Mrs. Sirimavo Bandaranaike (Aggrieved Party)*** **[(1992) 1 Sri LR 371 at 386]** it was held that if a respondent in a civil appeal fails to take the steps as specified in Section 772 of the Civil Procedure Code, he will not be allowed to canvass any such finding of the trial judge which is unfavourable to him.

Hence, the High Court erred in law in examining issue No. 6 afresh.

Moreover, the Respondent denied the rights of the Appellant to the corpus (Appeal Brief, pages 105, 107). A tenant who disclaims to hold of his landlord and puts him at defiance is not entitled to have the action against him dismissed for want of a valid notice to quit **[*Muttu Natchia et al v. Patuma Natchia et al* (1 NLR 21); *Sundra Ammal v. Jusey Appu* (36 NLR 400); *Pedrick v. Mendis* (62 NLR 471); *K. Hassen v. A.O.Nagaria* (75 NLR 335); *Mansoor v. Umma* (1984) 1 Sri LR 151; *Subramaniam v. Pathmanathan* (1984) 1 Sri LR 252; *Ranasinghe v. Premadharma* (1985) 1 Sri LR 63 at 71]**.

In fact, the Respondent went as far as claiming, in the answer, that upon an understanding between H.J.R.V. Perera and the Respondent in relation to the purchase of the corpus, he had paid the said H.J.R.V. Perera an aggregate sum of Rs. 25,000/= by cheque in two instalments of Rs. 10,000/= and Rs. 15,000/=.

Invito beneficium non datur, the law confers upon a person no right or benefit which he does not desire.

Accordingly, I answer the question of law No. 4 in the affirmative.

Question of Law No. 2

The learned trial judge held that no cause of action has accrued to the Appellant in the absence of notifying the Respondent that he is now the owner of the corpus or the giving of a notice to quit.

The Respondent submitted that the Appellant had failed to prove that he informed the Respondent of the new ownership and did not inform the Respondent to attorn to the Appellant, nor pay the Appellant any rentals. The only allegation made by the Appellant is that the Respondent verbally promised to the Appellant that he will vacate the corpus and did not vacate as promised.

According to the Respondent, the Appellant had not proved that he had informed the Respondent to vacate the corpus and thereafter the Respondent promised to vacate the corpus. In these circumstances, the Respondent submitted that no cause of action had arisen in favour of the Appellant to institute this action against the Respondent.

However, the principle is that where an owner of property sues for ejectment, his real cause of action is simply the fact that he is owner and therefore prima facie entitled to possession. In this action, the Respondent is admittedly in possession of the corpus.

In ***Graham v. Ridley*** **(1931 T.P.D. 476 at 479)** Greenberg, J. held that the cause of action in that case arises out of the fact that the plaintiff is the owner and is therefore entitled to possession, and whether a monthly lease is alleged, which has been lawfully terminated or whether it is alleged that there is a long lease which has been lawfully terminated, it does not affect her real ground of the right of possession.

Greenberg, J. went on to refer (at page 479) to the following extract from the unreported judgment in ***Gordon v. Kamaludin*** **(T.P.D. 15.9.27)**:

> *"One of the rights arising out of ownership is the right of possession: Indeed Grotius (Introd. 2, 3, 4) says that ownership consists in the right to recover lost possession.*

Prima facie, therefore, proof that the appellant is the owner and that respondent is in possession entitles the appellant to an order giving him possession, i.e., to an order for ejectment. When an owner sues in ejectment an allegation in his declaration that he has granted the defendant a lease which is terminated is an unnecessary allegation and is merely a convenient way of anticipating the defendant's plea that the latter is in possession by virtue of a lease, which plea would call for a replication that the lease is terminated. It is the defendant and not the owner-plaintiff who relies on the lease, and if the lease itself is denied by the defendant, as in the present case, the allegation of the lease is a surplusage. "

This position has been cited with approval in ***Senanayake v. Peter De Silva*** **[(1986) 2 Sri LR 405]** where Goonewardena, J., after examining several South African authorities which have applied the principle expounded in ***Graham*** **(supra)**, held (at page 411) that:

"These authorities, it will be seen, go so far as to hold that it is sufficient for an owner in these circumstances to make an assertion of ownership to the property, without further statement that the defendant's right of occupation is at an end (if that be the case) and upon the proof of such title to obtain recovery of possession. Indeed, they then demonstrate beyond any manner of doubt, that it is competent for an owner who has leased his land, upon showing that the lessee has lost the right of occupation, to eject him on the strength of his title and that an action so framed is not misconceived nor that the action should be constituted as one against an over holding lessee based upon the lawful termination of the contract of lease, before possession can be recovered."

Pieris **[G.L. Pieris, *Law of Property in Sri Lanka*, 1st ed., page 297]** agrees with the exposition of this principle.

Moreover, in ***Luwis Singho and Others v. Ponnamperuma*** **[(1996) 2 Sri LR 320 at 324]** Wigneswaran, J. held that:

> *"[…] in a rei vindicatio action,* ***the cause of action is based on the sole ground of violation of the right of ownership****. In such an action proof is required that;*
>
> *(i) the Plaintiff is the owner of the land in question i.e. he has the dominium* ***and,***
>
> *(ii) that the land is in the possession of the Defendant (Voet 6:1:34)"* (emphasis added)

At this point, it must also be stated that the High Court erred in holding that the Appellant failed to establish that the two boutiques possessed by the Respondent fall within the corpus.

According to the Respondent, the two boutiques leased to him were situated on Lot 18 in Plan No. 1467. The Appellant purchased Lots 2 and 3 in Plan No. 4232 which was a subdivision of the amalgamated Lots 18 and 19 in Plan No. 1467. According to the evidence of K.H.S. Panditharatne, Licensed Surveyor, he has included the buildings situated in Lots 18 and 19 in Plan No. 1467 as part of Lots 2 and 3 in his Plan No. 4232. This part of his evidence went unchallenged.

Accordingly, I answer question of law No. 2 in the affirmative.

In view of the answers given to questions of law Nos. 1, 2, 3 and 4, there is no need to answer questions of law Nos. 5 and 6.

For all the foregoing reasons, I set aside the judgment of the High Court dated 30.07.2012 and the judgment of the District Court of Kegalle dated 01.06.2010.

I enter judgment as prayed for in prayers (ඊ) and (ඉඵ) of the plaint dated 12.05.1999.

The Learned District Judge of Kegalle is directed to enter decree accordingly.

The Respondent shall pay the Appellant Rs. 100,000/= as costs of this appeal.

Appeal allowed.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

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

I agree.

JUDGE OF THE SUPREME COURT