

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

**SC. APPEAL. 113/2011**  
SC. HC. CA. LA. 414/2010  
WP/HCCA/MT/18/2002(F)  
Mount Lavinia No. 612/96/L

In the matter of an Application made for  
Leave to Appeal under and in terms of  
Section 5C of the High Court of the DC.  
Provinces (Special Provisions)  
(Amendment) Act No. 54 of 2006.

D. K. Abeysinghe  
272, Kahatuduwa,  
Polgasowita.

**PLAINTIFF-APPELLANT-PETITIONER**

Vs.

1. M. M. Heen Manike
  2. K. P. Tilakasiri Perera
- Both of 186, Sri Vijiragnana Mawatha,  
Maharagama

**DEFENDANTS-RESPONDENTS-  
RESPONDENTS**

**BEFORE : TILAKAWARDANE, J.**  
**DEP, PC J.**  
**WANASUNDERA, PC J.**

Ikram Mohamed, PC with Mrs. A. T. Shyama Fernando and  
Mayura Gunawansa and Milhan Ikram Mohamed for the Plaintiff-  
Appellant-Petitioner.

Ranjan Suwandaradne with Anil Rajakaruna for the Defendants-  
Respondents-Respondents.

**ARGUED ON:** 17/06/2013

**DECIDED ON:** 18/11/2013

**TILAKAWARDANE J:**

Leave to Appeal was granted to the Plaintiff-Appellant-**Petitioner** (hereinafter referred to as the **Appellant**) on the 28.08.2011 against the judgment of the Provincial High Court of Civil Appeal of Mount Lavinia (hereinafter referred to as the High Court) bearing Case No. WP/HCCA/MT/18/02(F).

The Appellant instituted action in the District Court of Mount Lavinia bearing Case No. 612/96/L on the 30.04.1996 against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant-Respondent-Respondent (hereinafter referred to as the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent) seeking *inter alia* a declaration of title to the land described in Schedule 2 to the Plaint, marked Lot 1B of Plan No. 2023 dated 01.06.1995 made by Cyril Wickremage L.S., ejectment of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents there from and recovery of damages from 19.01.1996 (the date on which the Respondents were given notice to quit) at Rs.20,000/- per month for wrongful occupation.

K.P. Peter Perera was the tenant of Guneris Abeysinghe from on or about 1964 until his death on the 14.05.1990. The Appellant, on the death of Guneris Abeysinghe (his father) on 07.08.1983, became the Landlord of Lot 1B of plan No. 2023 dated 01.06.1995 made by Cyril Wickremage L.S. and within it having premises bearing Assessment number 186/1, 186A and 186. K.P. Peter Perera was in occupation of premises bearing Assessment No. 186.

On 11.10.1987 the Appellant sent a letter marked P11 to K.P. Peter Perera

requesting that payment be made to the Appellant. There was no reply and no rent was paid or deposited in the Appellant's name till K.P. Peter Perera's death on the 14.05.1990. Upon the death of K.P. Peter Perera, the 1<sup>st</sup> Respondent, the deceased's partner, and the 2<sup>nd</sup> Respondent, the deceased's son, became the tenants of the Appellant.

The Learned District Court Judge entered judgment in favour of the Respondents on the basis that upon the death of Guneris Abeysinghe, K.P. Peter Perera became the lawful tenant of the Appellant and upon the death of K.P. Peter Perera, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, by operation of law, became the lawful tenants of the Appellant. The Appellant being aggrieved by the said judgment appealed to the Provincial High Court of Civil Appeal of Mount Lavinia, who dismissed the Appeal on the 03.11.2010.

Leave to Appeal was granted by the Supreme Court of the Democratic Socialist Republic of Sri Lanka on the 28.08.2011 on the following issues of law;

1. As the Appellant was found to have lawful title of the premises in question, whether the dismissal of the Appellant's action was erroneous in law?
2. Whether, in view of the 1<sup>st</sup> Respondent's admission that she was never married to K.P. Peter Perera, the finding in favour of the 1<sup>st</sup> Respondent was erroneous and contrary to **Section 36(2)** of the *Rent Act No. 7 of 1972*?
3. Have the Learned Judges erred in law in finding that both Respondents were lawful tenants of the Appellant?

This Court is of the opinion that the key point to answering the issues on which Leave to Appeal was granted is whether or not the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were dependants for all purposes for which this Act applies as stated in **Section 36 (2) (a)** of the *Rent Act No. 7 of 1972* which reads as follows:

*(2) Any person who-*

*(a) in the case of residential premises the annual value of which does not exceed the relevant amount and which has been let prior to the date of commencement of this Act-*

*(i) is the surviving spouse or child, parent, brother or sister of the deceased tenant of the premises or was a dependant of the deceased tenant immediately prior to his death; and*

*(ii) was a member of the household of the deceased tenant (whether in those premises or in any other premises) during the whole of the period of three months preceding his death;*

The 1<sup>st</sup> Respondent states that she and K.P. Peter Perera were cohabiting as if they were husband and wife and therefore subsequent to the death of K.P. Peter Perera, the tenancy held by him passed on to her as she had been living with him since 1980 and therefore she satisfied the requirements of **Section 36 (2) (a)**.

However, it has been brought to this Court's attention that at Cross Examination, the 1<sup>st</sup> Respondent admitted that K.P. Peter Perera was married to another while he was living with her and that K.P. Peter Perera's wife was alive at the time of his demise. Therefore 1<sup>st</sup> Respondent is not a “spouse” for all intents and purposes of **Section 36(2) (a)**.

The 2<sup>nd</sup> Respondent's claim is through the 1<sup>st</sup> Respondent. Therefore the question to be determined is whether the 1<sup>st</sup> Respondent is a dependant within the meaning of the Rent Act No.7 of 1972. The statute by **Section 36(2) (a)** imposes a restriction on the rights of the Landlord, as it enables the *surviving spouse or child, parent, brother or sister of the deceased tenant of the premises or was a dependant of the deceased tenant* to claim a tenancy right against the Landlord.

The degree to which a person is deemed to be a “dependant” under Section 36(2)(a) was discussed in the case of **Kodithuwakku Arachchi v Wadugodapitiya (1994)** (3

*SLR 29*), where it was held that the doctrine of *ejusdem generis* should be used when interpreting the meaning of “dependant”. The case quoted the application of the doctrine from **Smelting Co. of Australia v The Commissioner of Inland Revenue [1897]** (1 QB 175), where *ejusdem generis* was described as meaning; ‘a restriction on general words that immediately follow or which are closely associated with specific words and that their meaning must be limited by reference to the preceding words’.

**Section 36 (2) (a)** has now been repealed and replaced by **Section 36 (2) (a)** of the *Rent Act No.26 of 2002*. The new Section no longer mentions “dependant” and restricts claims under this Section to a *surviving spouse or child or parent or unmarried brother or sister of the deceased tenant or brother or sister of the deceased tenant if he was unmarried at the time of death*. It is the opinion of this Court that based on the new Section brought in by the 2002 Amendment of the Rent Act, the Legislature never intended to unduly restrict the rights of the Landlord by enabling a wide range of individuals to claim as dependants. Therefore, the definition of “dependant” should be interpreted by having regard to the words prior to it, i.e. “spouse” “child” “parent” “brother or sister”, and therefore in order to be a dependant, it is the finding of this Court that a familial connection to the deceased is essential.

*The Workman's Compensation Ordinance 19 of 1964* provides a definition for “dependant” at **Section 2(1)** of the Ordinance which reads as follows;

*“dependant” means any of the following relatives of a deceased workman, namely:-*

*(a) a wife, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother; and*

*(b) if wholly or in part dependant on the earnings of the workman at the time of his death, a husband, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed*

*daughter-in-law, a minor child of a deceased son or deceased daughter or, where no parent of the workman is alive, a paternal grandparent*

This definition restricts the meaning of “dependant” and ensures that anyone claiming as a dependant has a clear familial connection to the person under whom they are claiming dependency. Though this definition is specific to compensation in the work place, the general wording of the section can be used to define the meaning of a “dependant” under the law.

Further, the definition provides a clear guide as to when an illegitimate child would be able to claim as a dependant.

Though the Respondents are not claiming at this point that the 2<sup>nd</sup> Respondent is a dependant of the deceased tenant, this Court would like to clarify that an illegitimate child does not have the same rights of dependency as a legitimate child under Sri Lankan law. Though some rights of dependency can be claimed, the restrictions are far greater on an illegitimate child, especially where the child is no longer a minor. This is also reflected in the above quoted definition from the *Workman's Compensation Ordinance*. It is this Court’s intention to provide a clear and concise definition of “dependant” and thereby reduce the uncertainty that exists from the lack of such a definition. The Court will use the definition provided in the *Workman's Compensation Ordinance* as a guideline and attempt to coin a suitable definition that can be applied in relation to land law.

The case of **Kodithuwakku Arachchi v Wadugodapitiya (1994)** (3 SLR 29) identified the factors that Sri Lankan case law has considered when deciding whether an individual is a dependant under the Rent Act. The case set out three propositions that have been established by case law;

1. Dependency is not based on the legal obligation to maintain;
2. A dependant is a person who derives support wholly or mainly for his or her subsistence upon another;

3. It is a question of fact upon the facts and circumstances of each case whether a person is a dependant of another.

These three propositions are helpful in providing guidance as to when a person would be deemed to be a dependant under the Rent Act. Nevertheless a more concise definition of “dependant” is necessary.

The word “dependant” is defined in the Oxford English Dictionary to mean *a person who relies on another, especially a family member, for financial support*. This is an indication that a certain level of support, particularly financial in nature, from the other is a necessary requirement in order to show dependency. Further, it indicates that the person relying on another does not have to be a family member.

However, whether a non-family member should be allowed to claim dependency under the law would depend on the type of support provided by the deceased prior to his death. This Court finds that this restriction on non-family members claiming dependency is essential to avoid fraudulent claims. Further, it should be noted that it is only in exceptional circumstances that an individual with no immediate familial connection would be seen as a dependent of the other individual.

Under Canadian law the definition of “dependant” is provided in the *Succession Law Reform Act*, R.S.O. 1990 c.S.26 at **Section 57**. The definition is as follows;

“dependant” means,

- (a) the spouse of the deceased,
- (b) a parent of the deceased,
- (c) a child of the deceased, or
- (d) a brother or sister of the deceased,

*to whom the deceased was providing support or was under a legal obligation to provide support immediately before his or her death;*

The Canadian definition of “child” as stated at **Section 1(1)** of the above named Act states that a child *includes a child conceived before and borne alive after the parent's death.*

The definition of “dependant” here is similar to that in the *Workman's Compensation Ordinance*, save that the Ordinance goes on to specify and differentiate legitimate and illegitimate children as well as define dependants in relation to the “earnings” of the deceased employee.

Therefore, it is essential to recognize what key features are important to identifying a dependant generally and the additional requirements to define a dependant under the Rent Act. The underlying definition of a dependant should not change; however, whether a person is a dependant would vary depending on the circumstances under which the question of dependency is assessed.

Based on this Court's reading of the *Canadian Act*, the definition of dependant provided in the *Workman's Compensation Ordinance* of Sri Lanka as well as Sri Lankan case law, it has become clear that the essential elements for determining if an individual is a “dependant” are whether he or she is;

the spouse of the deceased;

a minor legitimate child of the deceased;

a minor illegitimate child of the deceased where the child has been receiving the support of the deceased and/or the child is accepted by law (either through a birth certificate or other reliable source) to be child of the deceased;

a parent of the deceased;

a brother or sister who was supported the deceased;

a legitimate unemployed male or female child over the age of 18 or an unmarried legitimate female child over the age of 18 who is reliant on the deceased for financial support.

It is essential that in all of the above instances he or she is reliant on the other for

support. The type of support required would depend on the circumstances under which the claim of dependency was being made. However, the degree of support granted is required to be wholly or substantially from the deceased. Further, as stated previously, there may be exceptional circumstances where a person having none of the above familial connections maybe able to claim as a dependant. In addition the burden of proof is on the person claiming to be a dependant, to establish through evidence, the facts and circumstances that would be relevant and sufficient to prove that the person is “dependent”.

In relation to the Rent Act, it would depend on whether the person claiming a right of dependency was one of the above mentioned individuals and was living with the deceased tenant at the time of his or her death and was dependent for support at the time. Further, as the exercise of this right would stem from the Landlord's right in the property it is essential to ensure that those claiming under **Section 36(2)** were *prima facie* dependant on the deceased.

Therefore, if the 2<sup>nd</sup> Respondent was claiming as a dependant under **Section 36 (2) (a)**, he would not be successful as, at the date of giving evidence (19.04.2000) the 2<sup>nd</sup> Respondent was 32 years of age and therefore when K.P. Peter Perera died on the 14.04.1990 he would have been at least 22 years of age and hence he would not have been a minor. In addition, since he is an illegitimate child of the deceased tenant, he would not be seen as a dependant of the deceased tenant on the evidence presented to the Court.

The 2<sup>nd</sup> Respondent's claim is through his mother, the 1<sup>st</sup> Respondent, whom the Respondents submit is a dependant under **Section 36(2) (a)** of the 1972 Act. However, it is this Court's opinion that the 1<sup>st</sup> Respondent is not a dependant for all intents and purposes of this Act, despite the Respondents vehemently stating that she was a dependant of the deceased tenant, as she fell within the definition of a “dependant” stated above. Further, though the 1<sup>st</sup> Respondent states that she and the deceased, K.P. Peter Perera had been living as husband and wife, it has been

depicted in evidence that the deceased was married and his wife was still alive at the time of his death, therefore the 1<sup>st</sup> Respondent cannot be said to have the same rights as a spouse. Further, there are no exceptional circumstances proved by the Respondents to enable the 1<sup>st</sup> Respondent to claim as a dependant.

As the 1<sup>st</sup> Respondent is not a “dependant”, the 2<sup>nd</sup> Respondent's claim, which is based on the 1<sup>st</sup> Respondent's right as a dependant, fails.

Therefore, it is the finding of this Court that the Learned Judge of the District Court and the Learned Judge of the Civil Appeal High Court erred in their findings that the 1<sup>st</sup> Respondent is the lawful tenant of the said property.

The Judgment of the High Court dated 03.11.2010 is set aside and Judgment is entered in favour of the Plaintiff -Appellant-Petitioner as prayed for with costs in a sum of Rs 30,000/-.

**JUDGE OF THE SUPREME COURT**

**DEP, PC J.**

I agree

**JUDGE OF THE SUPREME COURT**

**WANASUNDERA, PC J.**

I agree

**JUDGE OF THE SUPREME COURT**