

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

In the matter of an Appeal to the
Supreme Court of the Democratic
Socialist Republic of Sri Lanka.

SC. Appeal 80/2010

SC/HCCA/LA 261/2009
WP/HCCA/Kal 106/02 (F)
D.C. Panadura No. 341/RE

Mrs. M.L.R. Fernando
"Gaya", Nalluruwa,
Panadura.

Plaintiff

Vs.

Mrs. I.M.R. Perera of No. 354/2,
Galle Road,
Panadura.

Defendant

And

Mrs. M.L.R. Fernando
"Gaya", Nalluruwa,
Panadura.

Plaintiff-Appellant

Vs.

Mrs. I.M.R. Perera of No. 354/2,
Galle Road,
Panadura.

Defendant-Respondent

SC. Appeal 80/10

And Between

Mrs. I.M.R. Perera of No. 354/2,
Galle Road,
Panadura.

Defendant-Respondent-Petitioner

Vs.

Mrs. M.L.R. Fernando
"Gaya", Nalluruwa,
Panadura.

Plaintiff-Appellant-Respondent

* * * * *

Before : Tilakawardane, J.
Dep, PC. J. &
Wanasundera, PC,J.

Counsel : Rohan Sahabandu, PC. for the Defendant-Respondent-
Petitioner.

Ikram Mohamed, PC. with M.S.A. Wadood and Milhan Ikram
Mohamed for the Plaintiff-Appellant-Respondent.

Argued On : 17-06-2013

Decided On : 10-10-2013

* * * * *

Wanasundera, PC.J.

Leave to Appeal was granted by this Court, in order to enable an Appeal against the judgment of the Western Province Civil Appellate High Court Holden in Kalutara dated 10.09.2009, on 04.08.2010 on the following questions of law as enumerated in paragraph 21 (a), (b) and (c) of the Petition dated 13.10.2009:

1. Has the repairs made by the Defendant caused deterioration to the premises in question which would come under the purview of **Section 22(1)(d)** of the **Rent Act No. 7 of 1972** as amended?
2. Was the replacement of Sinhala tiles (half round tiles) with Asbestos sheets caused deterioration to the premises?
3. In the circumstances pleaded, is the Plaintiff entitled to reliefs prayed for?

The Plaintiff-Appellant-Respondent [hereinafter referred to as the Respondent] instituted Action by Plaint dated 20.12.1995 in the District Court of Panadura, seeking the ejectment of the tenant, Defendant-Respondent-Petitioner [hereinafter referred to as the Petitioner] from premises formerly bearing Assessment No. 1/196 and presently bearing Assessment No. 354/, Galle Road, Main Street, Panadura on the ground that the condition of the premises had become deteriorated owing to acts committed by the Petitioner in terms of **Section 22(1)(d)** of the **Rent Act No. 07 of 1972**. Judgment was entered in favour of the Petitioner at the District Court and the Respondent appealed against this decision to the Court of Appeal and the said Appeal was transferred to the Western Province Civil Appellate High Court Holden in Kalutara where the decision of the District Court was disaffirmed. Subsequently, Action was instituted in the Supreme Court against the decision of the High Court.

The contentious issues of this case arise from the narrative which unfolded subsequent to the Respondent terminating the tenancy by giving the Petitioner Notice to Quit dated 22.09.1995 the abovementioned premises on or before

31.10.1995. This fulfils the pre-condition that the contract of tenancy must be terminated by a valid notice as laid out in C. A. No. 30/79 (F) (1984).

The standard rent of the said premises does not exceed Rs. 100/- per mensem. The Respondent asserted that during the tenancy, the Petitioner had failed to maintain the premises adequately by removing part of the roof of the premises.

The relevant premises in question constitute one half of the twin houses, the other of which has already been demolished by the owner. The roof house in question was tiled with 'Sinhala ulu' i.e 'half round tiles'. Subsequent to heavy rains in October 1991, as alleged by the Petitioner, the walls were soaked and cracked and the main beam was about to fall off. The Petitioner then complained to the Respondent but she is asserted to have not taken action to restore the roof but recorded at the Grama Sevaka's office on 04.11.1991 that she will not be held responsible for the safety of the tenants should a future accident regarding the premises, materialize. Subsequently, the Petitioner herself took action to repair the roof with asbestos sheets. The Respondent filed Action in the District Court prayed for an ejectment order claiming that this repair caused a 'deterioration' of the premises under **Section 22(1)(d)** of the **Rent Act No. 07 of 1972** which reads as follows:

*“ Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any residential premises the standard rent (determined under Section 4) of which for a month exceeds one hundred rupees shall be instituted in or entertained by any Court, unless where- the tenant or any person residing or lodging with him or being his subtenant has, in the opinion of the Court been guilty of conduct which is a nuisance to adjoining occupiers or has been convicted of using the premises for an immoral or illegal purpose **or the condition of the premises has, in the opinion of the Court, deteriorated owing to acts committed by or to the neglect or default of the tenant or any such person.**”*

The Respondent adduced evidence of a Chartered Architect who inspected the premises. The District Court dismissed the Respondent's action holding that the Petitioner was compelled to make the repairs and that the question of whether such

repairs amounted to deterioration or an improvement should be assessed from the point of view of an ordinary man and not the point of view of an expert.

The High Court refers to this observation and comments, that '*to determine the issue of the state or nature of the premises which it was and the alterations that have been made to it, are matters for expert opinion and thus an ordinary prudent man cannot possess the expert knowledge to determine such issues*'.

This Court is of the opinion that the High Court was pragmatic when making the above observation and asserts that expert evidence is a fundamental necessity upon which the question of whether repairs amount to deterioration or improvement remains.

In ascertaining this fact, the changes made to the original structure are pivotal in this case. The original status of the premises as well as its present state is dependent upon expert evidence and this Court relies on the Report dated 12.10.1997, marked "P1" in evidence, issued by the Chartered Architect by the name of M. Lalith De Silva who recorded that the original roof was a 'half round country tile roofing on a traditional timber structure'. He noted that at present, 'the heights of the walls had been reduced to reduce the roof slope to match the recently built corrugated asbestos cement sheet roofing' and that 'the height of the ridge has at least been lowered by *two feet* by the breaking of the original walls of the house.'

The issue that first arises is whether the above amount to a structural alteration. The Court takes into account the view of **Neil J** in **A. C. T. Constructions Ltd. V Customs Excise Commrs (1982)** (1 All ER 84) [as quoted in **Barakathulla v Hinniappuhamy (1982)** (2 SLR 463)] where he stated that an alteration with reference to a building is a *structural alteration*. In this light, the replacement of tiles with asbestos cement sheets and the reduction of the height of the walls by two feet undoubtedly amount to a structural alteration. This clarification prompts the fundamental issue of whether such a structural alteration amounts to an improvement or a deterioration of the premises.

In this regard, this Court quotes **Wille** in “**Landlord and Tenant in South Africa**”, 4th Edn (p.265) where it is stated that:

“A necessary improvement is one which is necessary, for the protection or preservation of the leased property. The other forms of improvements are divided by authorities into useful improvements, namely, those which improve the property or add to its value and luxurious movements such as statutory.”

On face value, the repair appears to be in the form of an improvement because it involved the reparation of the roof. However, this Court must also consider whether this repair actually fulfils the function of an improvement. For instance, in **Musthapa Thamby Lebbe v Ruwanpathirane (1986)** (1 SLR 201), the construction of a water-sealed latrine subsequent to the demolition of a bucket latrine was considered by the Court to be an improvement as it *improved the condition* of the premises. In **Barakathulla v Hinniappuhamy (1982)** (2 SLR 463), the replacement of a tiled roof with asbestos was considered a useful repair (therefore an improvement) because it *‘has not otherwise damaged the building’*. In the present case, whether it was a useful repair is contested as the alteration has, in fact, damaged the building with at least 2 feet of the wall being destroyed to align the asbestos sheets thereby changing the external appearance of the premises for the worse. Thus, this Court sees sufficient evidence of damage to ascertain the inapplicability of the above dicta.

Having established that these alterations do not amount to an improvement according to settled law, this Court takes into account the following elements of ‘deterioration’. **Thamotheram J** in **De Zoysa v Victor De Silva (1970)** (73 NLR 576) noted that deterioration must amount to *making worse the premises* and this is confirmed by **Thambiah J** in **Musthapa Thamby Lebbe v Ruwanpathirane (1986)** (1 SLR 201) where he noted that the acts complained of must *cause some damage* to the premises let and thereby *worsen its condition* to obtain an ejectment on the ground of deterioration of the premises as contemplated in **Section 22(1)(d)** of the **Rent Act**. In **De Alwis v Wijewardena (1958)** (59 NLR 36), **Gunasekera J** held that *‘substantial change for the worse’* amounted to deterioration. All these cases seek to affirm the view that a successful action of ejectment on this ground must encompass acts that cause damage to the premises and thereby worsen its condition.

In this regard, it is noteworthy that the Report of the Chartered Architect also observes that a fair quantity of valuable timber has disappeared thus reducing the value of the house and that the lowering of the roof slope by breaking the walls and changing the roof materials have distorted the architecture and character of the premises thereby making it appear 'unfinished.' It should be mentioned that though, traditionally, repairs done to an old house would usually make it 'newer' and thereby constitute an improvement, in this case, according to expert evidence, the repairs carried out have given the premises a 'disorganized' or disarranged appearance due to the structural alteration of the walls. Furthermore, in establishing the worsening of the premises, the Chartered Architect asserted that the present asbestos arrangement constitute a health hazard as well.

The Petitioner also relied on the case of **W. A. S. de Silva v L. Gooneratne** 1 MLR 6 where the act of removal of round tiles from the roof of the premises and replacing them with galvanized sheets was held to not constitute 'wilful damage' as the 'act complained of has not changed the nature or character of the property let in any manner.' This Court makes a distinction between this case and the present one as visible physical changes have been made to the 'nature and character' of the property resulting in the reduced value of the property.

A point of contention pursued by the Petitioner is that the decline of the 'value' of the premises does not come within the parameters of 'deterioration'. The Petitioner relied on **Musthapa Thamby Lebbe v Ruwanpathirane (1986)** (1 SLR 201), that deterioration is the act of making worse the premises to support this contention. However, this Court notes that the act of making worse the premises has not been restricted to physical alterations only and further notes that 'value' could be included in this definition for, given the present status of the premises, the value being reduced also contributes to making worse the premises in terms of its commercial worth should the Petitioner wish to lease the property to another or sell especially when accounting for the value it accrues as it ages. Further, the Petitioner would have to incur further financial burden in order to restore the premises to its former state as presently, the premises appear 'unfinished' and therefore, this Court finds

that the reduction of the value of the premises amounts to making worse as stated in **Musthapa Thamby Lebbe v Ruwanpathirane (1986) (1 SLR 201)**.

In the above case, the Court further notes a passage from **Wille's "Landlord and Tenant in South Africa" (4th Edn. P. 288)** where it stated that:

"It is the duty of the tenant to take proper care of the leased property, to use, it for the purpose for which it was let and for no other purpose, and, on the termination of the lease, to restore the property to the landlord in the same condition in' which it 'was delivered to him, reasonable wear and tear excepted. It follows that the tenant must not abandon or neglect the property, or misuse, injure, or alter it in any way, and a fortiori he may not destroy it, or appropriate the substance of the property."

This Court draws attention to the need to avoid alteration and avoid the appropriation of the substance of the property. The repairs have fundamentally altered the appearance of the premises and affected its value negatively, as confirmed by expert evidence, in contravention of the duties of a tenant. Furthermore, this Court relies on the expert evidence provided and notes 80% of the roof tiles which were displaced during the repairs should have been serviceable and these tiles, except for roughly 15, were absent.

This Court seeks to reaffirm the view that acts that improve the condition of the premises amount to useful improvements that enhance the value of the premises and distinguishes the present case as the alterations done have not resulted in an useful improvement but has changed the character of the premises and subsequently diminished its value as well.

This Court also notes the contradictory statements made by the Petitioner, first in stating that the Respondent consented to repairs. The High Court judgment notes that during trial proceedings, the Respondent allegedly obtained the Petitioner's consent to carry out the necessary structural adjustments. Yet this was contrary to what was recorded in the abovementioned statement made to the Grama Sevaka. Furthermore, the Respondent, during cross-examination, admitted that there was no written evidence of consent being given and therefore, this Court cannot place reliance merely upon the word of the Respondent. Secondly, there is an issue of whether the wall has actually collapsed as claimed in the Plaint before the District

Court [paragraph 6(2)]. There is no evidence that the wall had actually collapsed. The statement made by the Petitioner to the Grama Sevaka on 07.11.1991 marked 'V2' records that the heavy rains had soaked the walls and caused cracks and that the central beam of the roof was about to fall off and there is no acceptable evidence to affirm a collapse. During cross-examination, the Petitioner indicated that there was no demolition of the wall but that the reduced height of the wall was due to it breaking. Given that the difference of height is only 2 feet and taking into account expert evidence where it was stated that the wall had to be broken in order to place the asbestos sheets during cross-examination, this does not support the Petitioner's contention that the wall actually collapsed thereby warranting reconstruction.

The necessity for such an improvement is also disputed as the Respondent's father has already made substantial renovations to the premises. Furthermore, small renovations in the form of cementing the cracks that had appeared were undertaken subsequent to the complaint by the Petitioner.

In these circumstances, I answer the questions of law in favour of the Plaintiff-Appellant-Respondent and dismiss the Appeal setting aside the judgment of the District Court of Panadura No. 341/RE and confirming the judgment of the High Court dated 10.09.2009. However, I order no costs.

Judge of the Supreme Court

Tilakawardane, J.

I agree.

Judge of the Supreme Court

Dep, PC. J.

I agree.

Judge of the Supreme Court

