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

In the matter of an Appeal in terms of Section 5 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

S.C. Appeal No: 192/2015

SC/HCCA/LA No: 495/2014

and 496/2014

WP/HCCA/COL. No: 25/2009(F)

and 44/2009(F)

DC Colombo Case No: 8448/RE

and 8449/RE

G.G.G. Mohamed Ismile Safeer Mohomed,

Palliyakotuwa, Batugoda,

Mahanuwara.

PLAINTIFF

Vs.

1. P.G. Sulaiman Lebbe Nizzamdeen,
   Palliyakotuwa, Ambatenna.
2. Kumaresan Nadar Thangasamy,
   No. 149, Maliban Street,
   Colombo 11.

DEFENDANTS

AND

Kumaresan Nadar Thangasamy,

No. 149, Maliban Street,

Colombo 11.

2nd DEFENDANT-APPELLANT

Vs.

G.G.G. Mohamed Ismile Safeer Mohomed,

Palliyakotuwa, Batugoda,

Kandy.

PLAINTIFF-RESPONDENT

P.G. Sulaiman Lebbe Nizzamdeen,

Palliyakotuwa, Ambatenna.

1st DEFENDANT-RESPONDENT

AND NOW BETWEEN

G.G.G. Mohamed Ismile Safeer Mohomed,

Palliyakotuwa, Batugoda,

Kandy.

PLAINTIFF-RESPONDENT-APPELLANT

Vs.

P.G. Sulaiman Lebbe Nizzamdeen,

Palliyakotuwa, Ambatenna.

1st DEFENDANT-RESPONDENT

-RESPONDENT

Kumaresan Nadar Thangasamy,

No. 149, Maliban Street,

Colombo 11.

(And now presently at

A6, Bloemendhal Flats,

Kotahena, Colombo 13.)

2nd DEFENDANT-APPELLANT-

RESPONDENT

Before : S. Thurairaja, P.C., J.

: Kumudini Wickremasinghe, J.

: Sampath B. Abayakoon, J.

Counsel : Nuwan Bopage with Dinusha Thiranagama instructed by Sunara Jayawardena for the Plaintiff-Respondent-Appellant.

: Respondents are absent and unrepresented.

Argued on : 14-02-2025

Written Submissions : 08-01-2016 (By the Plaintiff-Respondent-Petitioner)

Decided on : 04-04-2025

Sampath B. Abayakoon, J.

This is an appeal preferred by the plaintiff-respondent-appellant (hereinafter referred to as the plaintiff) on the basis of being aggrieved of the two separate judgments pronounced by the Provincial High Court of the Western Province holden in Colombo in Case Numbers WP/HCCA/COL/25/2009/(F) and WP/HCCA/44/2009/(F), while exercising its civil appellate jurisdiction.

From the impugned judgments, the common judgment pronounced by the learned District Judge of Colombo in District Court of Colombo Case No. 8448/RE and 8449/RE, where the judgments were in favour of the plaintiff were set aside, and the two actions filed by him before the District Court was dismissed.

The proceedings of the two cases filed before the District Court suggest that it has been agreed by the parties to have one trial with regard to the above mentioned two District Court cases and to have a common judgment, as the parties in both cases, the causes of action, as well as the reliefs asked had been the same.

This is a matter where the plaintiff filed an action against the 1st defendant of both the cases and the 2nd defendant-appellant-respondent (hereinafter referred as the 2nd defendant) seeking to evict the 2nd defendant from the premises mentioned in the schedules of the two plaints. The action had been instituted on the basis that the 1st defendant-respondent-respondent (hereinafter referred to as the 1st defendant), who is his tenant of both premises, has sub-let it to the 2nd defendant without authorization.

It was an admitted fact that the two premises were governed by the provisions of the Rent Act and were business premises.

In Case No. 8448/RE, the relevant premises mentioned in the schedule had been No. 149, Maliban Street, Colombo 11, while in Case No. 8449/RE, the relevant premises had been No. 147/1/8, Maliban Street, Colombo 11.

It is also clear that the assessment No. 149 referred to in Case No. 8448/RE is the ground floor, and the assessment No. 147/1/8, which is the subject matter of the Case No. 8449/RE, is the upper floor of assessment No. 149. This in effect shows that the action has been in relation to one building with two assessment numbers.

It appears from the case record that the 1st defendant has not taken part in the case, and it was the 2nd defendant who has contested the action initiated by the plaintiff. Although there had been no admission recorded, it is clear that both the assessment numbers had been occupied by the 2nd defendant.

At the trial, the 2nd defendant has only formulated one issue on the basis that the District Court lacks jurisdiction to hear and determine the cases, for which the learned District Judge has answered considering it as a preliminary issue. It had been determined that the Court has jurisdiction.

It appears that the position taken up by the 2nd defendant at the trial had been that he is not the sub-tenant of the 1st defendant, but a tenant under the plaintiff. Since it has been claimed by the 2nd defendant that the sub-tenancy agreement relied on by the plaintiff was a fraudulent document, it has been referred to the Examiner of the Questioned Document (EQD) where it has been opined by the EQD that, in fact, the signatures in the said sub-tenancy agreement belongs to the 2nd defendant.

At the trial before the District Court, it had been the brother of the plaintiff who has given evidence on behalf of him. He has stated that since his brother and other family members are undereducated, it is he who looked after the property in question. He has produced the agreement marked P-01 where the plaintiff has let the premises No. 149, Maliban Street, Colombo 11 to the 1st defendant on rent. It has been his evidence that subsequent to the agreement marked P-01, since the 1st defendant requested the upper floor of the building which bears the assessment No. 147/1/8 also on rent, it too was given to him although no written agreement was executed in that regard.

Since, the 1st defendant has not contested both the actions, I do not see any bar to accept the oral evidence led on behalf of the plaintiff in that regard.

The document marked P-01 has never been challenged in Court, which also goes on to show that the learned District Judge has been correct in accepting the said document and also the oral evidence led in that regard, to determine that the 1st defendant was in fact, the tenant of the plaintiff.

It has been the evidence of the witness who gave evidence on behalf of the plaintiff that few years after the agreement, they found the 2nd defendant in occupation of the building, and when inquired from the 1st defendant, he divulged to them that he sub-let the building to the 2nd defendant. It was the 1st defendant who has given the sub-letting agreement, which has been marked as P-03, to the plaintiff. This was not a document marked subject to proof.

Therefore, evidence adduced before the District Court amply supports the contention of the plaintiff that although P-01 and P-03 relates to assessment No. 149 only, the 1st defendant was his tenant in relation to assessment No.147/1/8 as well, and the entire building has been sub-let to the 2nd defendant by the 1st defendant.

It is abundantly clear from the judgment of the learned District Judge that the learned District Judge has well considered the question of tenancy between the plaintiff and the 1st defendant, and the question of sub-letting by the 1st defendant to the 2nd defendant in relation to both the assessment numbers.

Since it is an admitted fact that the premises in question is governed under the terms of the Rent Act and is a business premises, there cannot be any argument that a sub-letting by the tenant without the approval of the landlord is a good ground where such a tenant can be evicted from the premises let to him by the landlord.

The relevant section 10(2) of the Rent Act reads as follows.

> **10. (2) Notwithstanding anything in any other law, the tenant of any premises –**
>
> **(a) shall not, without the prior consent in writing of the landlord, sublet the premises to any other person; or**
>
> **(b) shall not sublet any part of the premises to any other person –**
>
> **i. without the prior consent in writing of the landlord; and**
>
> **ii. unless prior to subletting he had applied to the board to fix the proportionate rent of such part of the premises and had informed the board and the landlord the name of the person to whom he proposes to sublet such parts.**

The learned District Judge has well considered the claim by the 2nd defendant, that he is in occupation of the building as a tenant of the plaintiff, to conclude that it has no basis. The learned District Judge has also considered the report by the EQD not only on its face value, but by analysing his findings and also the evidence placed before the Court to come to a firm finding that there is documentary as well as oral evidence to justify a judgment in favour of the plaintiff in both the matters.

It is on that basis; the learned District Judge has pronounced a common judgment in relation to both the cases granting relief in favour of the plaintiff.

When this matter was appealed by the 2nd defendant to the Provincial High Court of the Western Province holden in Colombo, exercising its civil appellate jurisdiction, the learned Judges of the High Court has decided to pronounce two separate judgments, although the matter has been argued as a single appeal before the High Court.

In Case No. WP/HCCA/COL/25/2009(F), which was the judgment relating to District Court of Colombo Case No. 8448/RE, the learned High Court Judge

who pronounced the judgments in both the cases has determined that the oral testimony of the brother of the plaintiff was grossly insufficient to arrive at a conclusion that there was a tenancy agreement between the plaintiff and the 1st defendant. Therefore, it has been determined that since the tenancy has not been proved, considering the question of sub-letting would not arise.

However, it needs to be noted that in the same reasoning, the learned High Court Judge has determined that the document marked P-01, which is the tenancy agreement between the plaintiff and the 1st defendant with reference to the premises relating to Case No. 8448/RE, only establishes the fact that the 1st defendant is the tenant under the plaintiff, which, as correctly pointed out by the learned Counsel for the plaintiff was contrary to the earlier view expressed by the learned High Court Judge where it was stated that tenancy has not been proved.

On the basis that tenancy has not been proved between the plaintiff and the 1st defendant, the appeal preferred by the 2nd defendant challenging the judgment of the learned District Judge has been allowed.

Similarly, in Case No. WP/HCCA/COL/44/2009/F, which is the appeal in relation to the District Court Case No. 8449/RE, the learned High Court Judge has determined that although there is an agreement in relation to premises No. 149, Maliban Street, Colombo 11, which is the agreement marked P-01, it does not mean that the tenancy or sub-letting has been proved in relation to assessment No. 147/1/8, although both the assessment numbers relate to one building.

It has been determined that bare statements adduced on behalf of the plaintiff that the 1st defendant is the tenant of the plaintiff and he has sub-let the premises to the 2nd defendant is insufficient to arrive at a finding in that regard. Accordingly, the judgment of the learned District Judge has been set aside in relation to that case as well.

When this matter was supported for Leave to Appeal on 23-11-2015, this Court granted leave on the questions of law as set out in paragraph 17 (b), (c), (d) and (e) of both the petitions.

The 2nd defendant who appealed against the District Court judgment, or the 1st defendant for that matter, never appeared before the Court or had legal representation, although they were duly served with the relevant notices.

After the District Court judgment was pronounced in his favour, the plaintiff has obtained writ pending appeal following due process to take possession of the building under litigation, and it is he who is in possession of the building as of now, which may explain the absence of the 2nd defendant from the appeal proceedings before this Court.

When this matter was taken up for argument before this Court, having considered the relevant facts and the circumstances, as well as the matters urged in both the petitions, it was the view of the Court, as well as the learned Counsel for the plaintiff, that in fact, the following questions of law commonly stated in the petitions should be considered by this Court.

The said questions referred to in sub-paragraph (e) and (i) of paragraph 17 of the petition reads as follows.

> (e) The learned High Court Judge has seriously erred in facts by holding that the petitioner has not adduced sufficient evidence to establish a tenancy between the 1st respondent and the petitioner.
>
> (i) The learned High Court Judge has erred in law in failing to consider the document marked P-03, which was not marked subject to proof and /or in ignorance of the said document produced to prove sub-letting.

It was the submission of the learned Counsel for the plaintiff that the learned Judges of the Provincial High Court of the Western Province holden in Colombo, exercising its civil appellate jurisdiction, erred when determining that the plaintiff has failed to prove the fact that he is the landlord of the premises. He pointed out that there was ample evidence before the Court, both documentary and orally, that the plaintiff has given premises No. 149, as well as No. 147/1/8 to the 1st defendant on rent. It was his position that the evidence also shows that the said premises has been subsequently sub-let to the 2nd defendant by the 1st defendant without the permission of the plaintiff, who is the landlord.

He lamented that the plaintiff not giving evidence in the case cannot be considered as a valid reason to undermine the evidence led on behalf of the plaintiff, which has proved the case on the balance of probability against the two defendants. On that basis, he pleaded that the appeals should be allowed.

When considering the two appellate judgments pronounced by the learned High Court Judges of the Provincial High Court of the Western Province holden in Colombo, it is clear that the judgment of the learned District Judge of Colombo has been set aside for similar reasons. It has been determined that the plaintiff has failed to establish to the satisfaction of the Court that he is the landlord and there was a tenancy agreement between him and the 1st defendant.

When it comes to the judgment pronounced by the High Court in relation to Case No. WP/HCCA/COL/44/2009/F, in addition to the above, it has been determined that though there is a tenancy agreement in relation to premises No. 149, Maliban Street, Colombo 11, that does not mean the existence of a tenancy agreement between the plaintiff and the 1st defendant in relation to the premises No. 147/1/8, although it was a part of the same building.

It has also been held that since the plaintiff has failed to prove that he is the landlord, considering the issue of sub-letting would not arise. Apart from that, it has been determined that the evidence made available relating to the sub-letting would not be sufficient for the Court to arrive at a conclusion in that regard.

This is a matter where the 1st defendant has never contested the case filed against him and the 2nd defendant on the basis of sub-letting of the premises by him to the 2nd defendant. There has been no denial or contest that the plaintiff was the owner of the building, and it is he who let the building No. 149, Maliban Street, Colombo 11 based on the written agreement marked P-01 to the 1st defendant. When the document marked P-01 was produced in Court, there had been no challenge to the said document, which becomes a document that need not be further proved.

Although the learned High Court Judges of the Provincial High Court of the Western Province holden in Colombo has held that the oral testimony of the brother of the plaintiff, who gave evidence on behalf of him, was wholly insufficient to prove that there was a tenancy agreement between the plaintiff and the 1st defendant, it is abundantly clear that at the trial, it was not only oral evidence, but also documentary evidence that has been led to establish that the plaintiff was the landlord of the 1st defendant in the building under litigation.

I am of the view that the learned Judges of the High Court have erred on facts and law after having stated that P-01 establishes that the 1st defendant is the tenant of the plaintiff, but later deciding that such evidence was insufficient.

When giving evidence, the witness called on behalf of the plaintiff has clearly stated that his brother initially gave premises No. 149 on rent to the 1st defendant based on the tenancy agreement marked P-01, and later, since the 1st defendant requested additional space, he orally agreed to give the upper floor of the building, which has the assessment No. 147/1/8 also to the 1st defendant. This was an uncontradicted and unchallenged evidence before the District Court.

The 2nd defendant has never denied the evidence that it is he who is in possession of both the assessment No. 149 and 147/1/8. His position had been that he is the tenant of the plaintiff.

The plaintiff has produced the document marked P-03 in this action, which was the agreement to sub-let the premises to the 2nd defendant by the 1st defendant. Although the 2nd defendant has claimed that the signature in the said document does not belong to him, the plaintiff has clearly established that it was not so.

The plaintiff has obtained a commission to the EQD through the Court, and has produced the relevant Report where the EQD has clearly expressed an opinion that it was in fact the 2nd defendant who has signed the sub-letting agreement marked P-03. The EQD has given evidence in Court to substantiate his Report, and the learned District Judge, as he should, has independently

analysed whether the expert opinion can be accepted or not, before deciding to accept the expert opinion as relevant.

It is my considered view that the plaintiff, being the landlord, has established on balance of probability, a *prima facie* case of sub-letting of the premisses bearing both the assessment numbers by the 1st defendant to the 2nd defendant without permission. I find that the learned High Court Judges of the Provincial High Court of the Western Province holden in Colombo had no legally tenable basis to hold that the plaintiff has failed to prove the tenancy between himself and the 1st defendant, and to hold that considering the question of sub-letting would not arise.

It is well settled law that once the sub-letting is established, the burden shifts to the tenant to explain the nature of the occupation by the alleged sub-tenant.

In the case of **Sangadasa Vs. Hussain and Another (1999) 2 SLR 395**, the plaintiff filed an action to have the defendants ejected from the business premises let to the 1st defendant on the ground that the 1st defendant tenant has sub-let the premises to the 2nd defendant. The defendants, whilst denying sub-letting, pleaded that by virtue of a notarial agreement, they had entered into a partnership to run a business at the premises.

Held:

(1) *It is sufficient for a landlord to establish a prima facie case of sub-letting and the burden then shifts to the tenant to explain the nature of the occupation of the alleged sub-tenant.*

(2) *Exclusive possession of premises by a sub-tenant is a necessary ingredient of sub-letting.*

(3) *The plaintiff led sufficient prima facie evidence of a sub-letting by proof of the fact that the 2nd defendant was in the premises doing business and the 1st defendant appeared to have relinquished his control of the premises. Consequently, the burden shifted to the 1st defendant to explain the presence of the 2nd defendant on the premises doing business. This the 1st defendant failed to do.*

(4) *The partnership agreement was demonstrably a sham. The inference could, therefore, be drawn that the 2nd defendant was in exclusive possession of the premises, managing a business which admitted no owner but himself. On a balance of probability, the only inference the Court could draw was that the 1st defendant had rented out the premises to the 2nd defendant hence the plaintiff was entitled to judgment.*

In the case of **A.Z.M Azhar Vs. S. M. Fernando 76 NLR 118**, it was held,

> *"Where, in an action instituted by a landlord to eject his tenant on the ground that the tenant has sub-let a portion of the rented premises, the landlord's evidence is sufficient to establish a prima facie case of sub-letting. The burden is then on the tenant to furnish evidence in rebuttal."*

In the case under appeal, the 1st defendant who is the tenant, has not contested the cases filed against him by the plaintiff who is his landlord, and it had been the 2nd defendant who is the alleged sub-tenant of the 1st defendant who has contested the cases. It has been proved that it is the sub-tenant who is in possession of the premisses bearing the two assessment numbers.

It is abundantly clear that the plaintiff has established the facts stated in both the cases to prove the sub-letting. Under the circumstances, neither the 1st defendant nor the 2nd defendant has led sufficient evidence to rebut the evidence led on behalf of the plaintiff.

For the reasons as considered above, I answer both the questions of law formulated at the hearing of this appeal in the affirmative.

Accordingly, I set aside the two judgments pronounced by the learned High Court Judges of the Provincial High Court of the Western Province holden in Colombo, on 25-08-2014 while exercising its civil appellate jurisdiction in Case No. WP/HCCA/COL/25/2009/(F) and WP/HCCA/44/2009/(F) as both the judgments cannot be allowed to stand.

Hence, I affirm the judgment dated 07-01-2009 pronounced as a single judgment by the learned District Judge of Colombo with the agreement of the parties in relation to the District Court of Colombo Case No. 8448/RE and 8449/RE.

The appeal is allowed. There will be no costs of the appeal.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court