

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

**In the matter of an application for  
Special Leave to Appeal under  
Article 128(2) of the Constitution**

**SC/APPEAL No. 35/2016**  
SC/SPL/LA No. 09/2014  
CA NO. 555/2000(F)  
DC Bandarawela No. 174/RE

1. Mrs. Hyacinth Sita Seneviratne of  
24 Aloe Avenue, Colombo 03  
(a Trustee of “The Dassanayake  
Trust”)  
(Deceased)
  
2. Dr. Mackingsley Gamini  
Dassanayake, J. C. R.  
42, University Road, Highfield,  
Suthampton S09 5NH  
England  
(A Trustee of “The Dassanayake  
Trust”) by his Attorney in Sri  
Lanka  
Mrs. Hyacinth Sita Seneviratne of  
24, Aloe Avenue, Colombo 03  
(Deceased)
  
3. Sarathchandra Bandara Ehelepola  
Seneviratne of  
4420, Hawthorne Street,  
Washinton D. C  
United States of America,  
(A Trustee of “The Dassanayake  
Trust”) by his Attorney in Sri  
Lanka Mrs. Hyacinth Sita  
Seneviratne of 24, Aloe Avenue,  
Colombo 03  
(Deceased)

**Plaintiffs**

**Vs.**

1. Kader Ibrahim Mohamed Marzook  
50/1, Railway Station Road,  
Haputale
2. Jailabdeen Jaleel
3. Nageswary Arumugam
4. Miss N. Krishasamy (full name not known)
5. N. Kumaresmoorthy (full name not known) all of No. 9, Thambipilliai Avenue, Haputale.

**Defendants**

**AND**

Dr. Mackingsley Gamini  
Dassanayake of  
No. 24, Aloe Avenue,  
Colombo 03.

**2<sup>nd</sup> Plaintiff-Appellant**

**Vs**

1. K. I. Mohamed Marzook of  
No. 50/1, Railway Station  
Road,  
Haputale
2. Jailabdeen Jaleel of  
No. 9, Thambipilliai Avenue,  
Haputale

**Defendants-Respondents**

Mrs. Haycinth Sita  
Seneviratne of 24 Aloe  
Avenue, Colombo 03

(a Trustee of “The  
Dassanayake Trust”)  
(Deceased)

**1<sup>st</sup> Plaintiff-Respondent**

Sarathchandra Bandara  
Ehelepola Seneviratne of  
4420, Hawthorne Street,  
Washington D. C  
United States of America,

**3<sup>rd</sup> Plaintiff-Respondent**

3. Nageswary Arumugam
4. Miss N. Krishasamy
5. N. Kumaresmoorthy all of  
No. 9, Thambipillai Avenue,  
Haputale

**Defendants-Respondents**

**AND NOW BETWEEN**

K. I. Mohamed Marzook of  
No. 50/1, Railway Station  
Road,  
Haputale.

**1st Defendant- Respondent-  
Petitioner**

**Vs.**

Dr. Mackinsley Gamini  
Dassanayake of  
No. 24, Aloe Avenue,  
Colombo 03.  
(Deceased)

**2<sup>nd</sup> Plaintiff-Appellant-  
Respondent**

2A. Thamara Kumari  
Ramani Dassanayake, nee  
Tennekoon, No. 24, Aloe  
Avenue, Colombo 03

2AA. Mackingsley Kushan  
Dassanayake, No. 24, Aloe  
Avenue, Colombo 03

**Plaintiffs-Appellants-  
Respondents**

Jailabdeen Jaleel of  
No. 9, Thambipilliai Avenue,  
Haputale  
(Deceased)

**2<sup>nd</sup> Defendant-Respondent**

Mrs. Hyacinth Sita Seneviratne of  
24 Aloe Avenue, Colombo 3

(a Trustee of “The Dassanayake  
Trust”  
(Deceased)

**1<sup>st</sup> Plaintiff-Respondent-  
Respondent**

Sarathchandra Bandara  
Ehelepola Seneviratne of  
4420, Hawthorne Street,  
Washington D. C  
United States of America,

**3<sup>rd</sup> Plaintiff-Respondent-  
Respondent**

3. Nageswary Arumugam
4. Miss N. Krishasamy

5. N. Kumaresmoorthy all of  
No. 9, Thambipilliai Avenue,  
Haputale

**Defendants-Respondents-  
Respondents**

Before : Priyantha Jayawardena PC, J  
A. L. Shiran Gooneratne, J  
K. Priyantha Fernando, J

Counsel : Shantha Jayawardena with H. Damunupola, Sanjana de Zoysa and  
Wihangi Thiseru for the Defendant-Respondent-Appellant  
: Kaushalya Nawaratne, PC with Ms. Mohotti and E. Sandungahawatta  
instructed by NW Associates for the Respondents.

Argued on : 6<sup>th</sup> of February, 2024

Decided on : 29<sup>th</sup> of February, 2024

**Priyantha Jayawardena PC, J**

This is an appeal from a judgment of the Court of Appeal, which allowed the appeal and set aside the judgment of the District Court dated 6<sup>th</sup> of September, 2000.

The 2<sup>nd</sup> Plaintiff-Appellant-Respondent (hereinafter referred to as the “2<sup>nd</sup> plaintiff”) along with the 1<sup>st</sup> plaintiff (now deceased) and the 3<sup>rd</sup> Plaintiff filed the above style action in the

District Court of Bandarawela as trustees of the “Dassanayake Trust” against the 1<sup>st</sup> Defendant-Respondent-Appellant (hereinafter referred to as the “1<sup>st</sup> defendant”), the 2<sup>nd</sup> defendant(now deceased) and three other defendants *inter alia*, praying for ejectment on the ground of subletting the premises described in the schedule to the plaint.

In the plaint dated 29<sup>th</sup> of August, 1988, the plaintiff pleaded that without their written consent the 1<sup>st</sup> defendant sublet the premises, at No. 9, Thambipilliai Avenue, Haputale described in the schedule to the plaint to the 2<sup>nd</sup> to 5<sup>th</sup> defendants in January, 1998.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed an answer and denied the allegation of subletting the premises. It was pleaded that the 2<sup>nd</sup> defendant was the brother-in-law of the 1<sup>st</sup> defendant, and the 3<sup>rd</sup> to 5<sup>th</sup> defendants were unknown and fictitious persons. Accordingly, the 1<sup>st</sup> and 2<sup>nd</sup> defendants prayed for the dismissal of the plaint with costs.

Summons could not be served on the 3<sup>rd</sup> to 5<sup>th</sup> defendants and therefore, the action against them was withdrawn by the plaintiffs. Hence, the District Court made an order to proceed only against the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

Moreover, the said house had five rooms, and is subject to the Rent Act No. 7 of 1972. Further, the 2<sup>nd</sup> defendant who is the brother-in-law of the 1<sup>st</sup> defendant was also occupying the premises in suit with his family.

After an inter-parte trial, the learned District judge delivered the judgment and dismissed the plaint. In the said judgment it was *inter alia* held that the plaintiff has not proved the case on a balance of probability.

Being aggrieved by the said judgment the plaintiffs appealed to the Court of Appeal. After hearing the appeal, the Court of Appeal set aside the judgment of the District Court and allowed the appeal by judgment dated 29<sup>th</sup> November, 2013. In the said judgment, the Court of Appeal held *inter alia*;

*“During the cross examination of the 1<sup>st</sup> Respondent, the Appellant has produced a certified copy of the Electoral Register marked P5. According to P5, the 1<sup>st</sup> Respondent was the chief house holder of premises No. 705A Railway Station Road...Said evidence has clearly shown that during the period relevant to this action, the 1<sup>st</sup> Respondent was not in occupation of the premises in suit, i.e., No. 09 Thambipillai Mawatha, Haputale. Also it was crystallised*

*that the 1<sup>st</sup> Respondent was in occupation of the premises No. 705A, Railway Station Road.*

*When I consider the said evidence it is my considered view that the Appellants has led sufficient prima facie evidence to establish that there was subletting by proof of the fact that 2<sup>nd</sup> defendant was in the premises attend to his own work and that 1<sup>st</sup> Respondent appeared to have relinquished his control of the premises...*

*At the trial, the 2<sup>nd</sup> Respondent has not given evidence. Therefore, it seems that the Respondents have not only failed to challenge the evidence of the Appellants but also to corroborate the evidence of the 1<sup>st</sup> Respondent. In the said circumstances it can be concluded on a balance of probability that the 1<sup>st</sup> Respondent has sublet the premises in suit to the 2<sup>nd</sup> Respondent...*”

Furthermore it was held by the learned Judge of the Court of Appeal, who stated;

*“the Appellants has led sufficient prima facie evidence establishing that there was subletting by proof of the fact that the 2<sup>nd</sup> defendant was in the premises attend to his own work and that 1<sup>st</sup> respondent (Appellant) appeared to have relinquished his control of the premises. The burden must then necessarily shift to the 1<sup>st</sup> Respondent to explain the presence of the 2<sup>nd</sup> Respondent”*

Being aggrieved by the said judgment of the Court of Appeal, dated 29<sup>th</sup> of November, 2013 the defendants sought Special Leave to Appeal and this court granted Special Leave to Appeal on the following questions of law:

*“(a) Has the Court of Appeal gravely erred in regard to its evaluation of the evidence in this case particularly in relation to P5 and P6?*

*(b) Is there any evidence in this case to establish that the 1<sup>st</sup> defendant can in law be considered to have sublet the premises in suit or a part thereof to the 2<sup>nd</sup> defendant?”*

**Has the 1<sup>st</sup> defendant sublet the premises in suit or part of it?**

The 2<sup>nd</sup> plaintiff gave evidence at the trial and stated that his deceased father and his sister, the deceased 1<sup>st</sup> plaintiff, gave the said premises on rent to the 1<sup>st</sup> defendant. Further, he had visited several times to see the premises in suit.

He further stated that when he went to the said premises along with his sister who is the 1<sup>st</sup> plaintiff in January 1988, the 1<sup>st</sup> defendant was not in the said premises. However, the 3<sup>rd</sup>, 4<sup>th</sup> and the 5<sup>th</sup> defendants were occupying two rooms of the said premises. Further, all the other rooms in the home were occupied by the 1<sup>st</sup> defendant, and the 2<sup>nd</sup> defendant and his family. Moreover, the 1<sup>st</sup> plaintiff spoke with the 3<sup>rd</sup> to 5<sup>th</sup> defendants, the female Tamil teachers who were residing in the premises, who said that they were residing in that home, and that they paid the rent to the 1<sup>st</sup> defendant.

Moreover, the plaintiffs produced the Electoral Register for the occupants of the house No. 705A, Station Road, Haputale, in order to establish that the 1<sup>st</sup> defendant had ceased to occupy the premises in suit.

The 1<sup>st</sup> defendant gave evidence and said that the premises were let out to him in 1979 by the 1<sup>st</sup> plaintiff. He stated that the house at Railway Station Road, Haputale was his father's house and that it was given to his elder brother. Hence, he took the premises in suit on rent.

The 1<sup>st</sup> defendant further stated that he occupied the premises in suit with his mother, his younger sister and her husband who is the 2<sup>nd</sup> defendant. In the circumstances, he denied that he sublet the said the premises to his brother-in-law, the 2<sup>nd</sup> defendant or to anyone else.

The 1<sup>st</sup> defendant admitted under cross-examination that he went to Saudi Arabia for employment in 1982 and had returned in 1984. Thereafter, once again he went to the said country in 1993 and returned in 1994. The 1<sup>st</sup> defendant stated that he paid the rent and that his younger sister or her husband made no payment whatsoever.

He further stated that he was not occupying his father's house at No. 50/1, Railway Station Road, Haputale until 1979. He also stated that his father died in 1978 and thereafter, his elder brother has been residing in that house with his sisters. However, the 1<sup>st</sup> defendant admitted that his name was registered in the Electoral Registers for the house at No. 50/1 Railway Station Road, Haputale.



## Analysis

The 1<sup>st</sup> defendant stated that the 2<sup>nd</sup> defendant was married to his sister and that they were occupying the premises in suit. Although the 1<sup>st</sup> Defendant had taken up the position that after 1979, he was not residing in the house at No. 50/1, Railway Station Road, Haputale, because his brother got that house from the father, the Electoral Register showed that his name appeared as the Chief Occupant of the said house in the year 1988 along with the 2<sup>nd</sup> defendant and two others. It is pertinent to note that the summons in the case was served by the process sever on the 1<sup>st</sup> defendant at No. 50/1, Railway Station Road, Haputale. Further, the caption of the plaint refers to the said address as the address of the defendant.

The oral testimony of the 2<sup>nd</sup> plaintiff, established that in addition to the 1<sup>st</sup> defendant there was at least one other family occupying the premises. Further, the 2<sup>nd</sup> plaintiff produced the Electoral Register to show that the 1<sup>st</sup> defendant was residing at No. 50/1, Railway Station Road, Haputale. Hence, the burden was shifted to the 1<sup>st</sup> defendant to explain the nature and the mode of occupancy of the 2<sup>nd</sup> defendant. A similar view of the burden of proof was discussed in *Sangadasa vs. Hussain and Another* [1999] 2 SLR 395 where it was held;

*"It is sufficient for a landlord to establish a prima facie case of subletting and the burden then shifts to the tenant to explain the nature of the occupation of the alleged subtenant"*

However, the learned District Judge held that the plaintiff did not prove its case. As stated above, the plaintiffs established a prima facie case that the 1<sup>st</sup> defendant has sub-let the house to the 2<sup>nd</sup> defendant and his family. Hence, the learned District Judge erred in law when he held that the plaintiff did not prove the case. It is pertinent to note that the Court of Appeal correctly held that the 1<sup>st</sup> defendant has sub-let part of the premises to the 2<sup>nd</sup> defendant. Thus, I am of the view that the Court of Appeal is correct in coming to the aforementioned finding after considering the evidence led at the trial. Accordingly, I answer the following questions of law as follows;

*“(a) Has the Court of Appeal gravely erred in regard to its evaluation of the evidence in this case particularly in relation to P5 and P6?”*

No

*“(b) Is there any evidence in this case to establish that the 1<sup>st</sup> defendant can in law be considered to have sublet the premises in suit or part thereof to the 2<sup>nd</sup> defendant?”*

Yes

Accordingly, the appeal is dismissed. The District Court judgment is affirmed. No costs.

**Judge of the Supreme Court**

**A. L. Shiran Gooneratne, J**

I agree

**Judge of the Supreme Court**

**K. Priyantha Fernando, J**

I agree

**Judge of the Supreme Court**