

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

In the matter of an Application for  
Leave to Appeal from the Judgment  
of the Civil Appellate High Court  
Case No. WP/HCCA/COL/115/2011 [F]  
of the Act No. 54 of 2006.

Fathima Meroza Jazeel,  
No. 212/3,  
Galle Road,  
Mount Lavinia.

**SC APPEAL 237/2017  
SC (HCCA) LA No. 213/2016**

**Plaintiff**

**PHC APPEAL  
No. WP/HCCA/COL 151/2011 (F)**

**District Court of Colombo  
Case No. 115/08/DLM**

**Vs.**

Dhammika Dahanayake,  
No.34, Panchikawatte Road,  
Colombo 10.

**Defendant**

**AND BETWEEN**

Fathima Meroza Jazeel,  
No. 212/3,  
Galle Road,  
Mount Lavinia.

**Plaintiff-Appellant**

Dhammika Dahanayake,  
No. 34, Panchikawatte Road,  
Colombo 10.

**Defendant-Respondent**

**AND THEN BETWEEN**

Fathima Meroza Jazeel,  
No 212/3,  
Galle Road,  
Mount Lavinia.

**Plaintiff-Appellant-Petitioner**

Dhammika Dahanayake,  
No.34, Panchikawatte Road,  
Colombo 10.

**Defendant-Respondent-  
Respondent**

**AND NOW BETWEEN**

Fathima Meroza Jazeel,  
No 212/3,  
Galle Road,  
Mount Lavinia.

**Plaintiff-Appellant-  
Petitioner-Appellant**

Dhammika Dahanayake  
(now deceased),  
No.34, Panchikawatte Road,  
Colombo 10.

**Defendant-Respondent-  
Respondent-Respondent**

1. Poorna Ranga Dahanayake,
2. Tharanga Dahanayake,

Both of;  
No.32/7,  
Dharmadasa Weeraratne  
Mawatha,  
Kandy.

**Substituted Defendants-  
Respondents-Respondents-  
Respondents**

**Before** : **S. Thurairaja, PC, J  
Kumudini Wickremasinghe, J  
K. Priyantha Fernando, J**

**Counsel** :  
  
H. Withanachchi with Shantha  
Karunadhara for the Plaintiff -  
Appellant – Appellant.

J. A. J. Udawatta with Anuradha N.  
Ponnamperuma instructed by V. W.  
Kularathne Associates for the  
Substituted – Defendants –  
Respondents – Respondents –  
Respondents.

**Argued on** : 18.07.2023

**Decided on** : 14.09.2023

**K. PRIYANTHA FERNANDO, J**

1. The Plaintiff-Appellant-Appellant in this case (hereinafter referred to as the appellant) instituted action against the Defendant-Respondent-Respondent (hereinafter referred to as the respondent) claiming that the respondent is a trespasser in the premises owned by the appellant. The main contest between the parties is whether the respondent is a trespasser

of the premises in suit as claimed by the appellant, or a lawful tenant of the premises as claimed by the respondent.

2. At the hearing of this appeal, this Court granted leave to appeal on the questions of law (i)-(viii) set out in paragraph 15 of the petition dated 06.05.2016. However, when the matter was taken up for hearing, this Court observed that some of the questions of law were in repetition. Both Counsel submitted that, they will be satisfied if the questions of law set out in paragraph 15(ii), 15(iv) and 15(vi) would be decided by this Court.

### **Facts in Brief**

3. The appellant *Fathima Meroza Jazeel* is the owner of the property to which the action relates. The property is situated at *No. 34, Panchikawatta road, Colombo 10*. According to deed No. 3526 dated 24.11.1947 [P-1], the property has been owned by the grandfather of the appellant. Thereafter, the grandfather has transferred the property to the appellant's grandmother preserving life interest, by deed No. 3691 dated 30.03.1951 [P-2]. The grandmother has transferred the property to the mother of the appellant reserving life interest. Thereafter, by deed No. 150 dated 03.02.1964 [P-3], the grandmother has renounced the property from the life interest and the mother of the appellant has become the absolute owner of the property. Thereafter, by deed No.2975 dated 09.10.1988 [P-4] attested by *N.M. Thaha* Notary Public, the property has been transferred to the appellant. The father of the appellant *M.H.M. Dean* has been managing the property in question ever since he was married to the appellant's mother and even after the property was transferred to the appellant, the father *M.H.M. Dean* has continued to manage the premises. *Dean* has passed away on 07.07.2008 [P-5].
4. When *Dean* was sick, the appellant has got an anonymous phone call stating that the caller is a friend of the appellant's father and has informed that the premises owned by the appellant is being occupied unlawfully. The appellant has instituted action to evict the respondent from the premises, stating that she is not a tenant of the appellant and therefore is unlawfully occupying the premises. Following this, action has been filed by the appellant in the District Court of *Colombo*. The appellant states that, she has never visited the

premises. However, after the death of her father, when she had passed by the premises, she had seen the name 'Asoka Digicom Private Limited' affixed in the premises [P-6].

5. The respondent, *Dhammika Dahanayake* has stated that, she has been running a communication center in the premises. The premises has been originally taken on rent by the father-in-law of the respondent in 1968. He has taken it on rent from the father of the appellant (*Dean*). After the death of the father-in-law of the respondent, the husband of the respondent has succeeded to the tenancy of *Dean* and paid rent to *Dean*. He has carried on the business under the name 'Asoka Communication' which was later converted into a Private Limited Company. Thereafter, the husband of the respondent has passed away on 05.10.2007 and the respondent has become the tenant of *Dean*. The appellant's father, *Dean*, has also attended the funeral of the respondent's husband. After the death of her husband, the respondent has succeeded to the tenancy and has continued to pay the rent of the premises to the bank account of *Dean* upon his request. The payment receipts have been produced ['V-36' – 'V-47']. The respondent has been unaware of the death of *Dean* up until action was instituted against her by the appellant.
6. The Respondent alleges that the company is the lawful tenant to the premises, and the company is being run by her. The letter ['P-8'] has been sent on 25.03.2008 by the appellant through an Attorney-at-Law, which was addressed to the respondent stating that the appellant is the owner of the said premises, it was unlawful for the respondent to occupy the premises and requesting the respondent to vacate the premises and surrender peaceful and vacant possession. The respondent has not replied to the said letter.
7. The plaint ['X-1'] has been filed by the appellant in the District Court on 30.04.2008 seeking a declaration that the appellant is the owner of the premises, a declaration for the ejectment of the respondent from the said premises and damages together with interests until possession was handed over.
8. The learned Judge of the District Court, delivering the judgment ['X-6'] on 23.09.2011 held in favor of the respondent stating that, the respondent was the tenant of the premises

and that the respondent's tenancy had not been terminated in accordance with the provisions of the Rent Act.

9. Being aggrieved by the judgment of the District Court, the appellant appealed to the Civil Appellate High Court of the Western Province holden in *Colombo* (Case No. WP/HCCA/COL 151/2011/F). The Civil Appellate High Court by judgment dated 28.03.2016 ['Z'] dismissed the appeal of the appellant.
10. Being aggrieved by the decision of the Civil Appellate High Court of *Colombo*, the appellant preferred the instant appeal. This Court will address the questions of law set out below, as mentioned before in paragraph No. 2 of this judgment.

15(ii) - Did the Courts below err in law by failing to take into account that the tenancy created by the father without a title to the premises in suit, was not binding on the plaintiff?

15(iv) - Did the Courts below err in law by not following the legal consequences flowing from the failure of the defendant to respond to letter 'P8'?

15(vi) - Whether the Courts below err in law by the finding that the tenancy of the defendant would continue notwithstanding the repudiation of the presumed conduct by her, after the receipt of 'P8'?

#### **Written submissions on behalf of the Appellant**

11. The learned Counsel for the appellant submitted that, since the appellant's title to the property in question has been established, the burden was on the respondent to prove her right to occupy the premises.
12. The learned Counsel submitted that, the question of validity of the letting done by the father without any right, title or interest in the property and the question whether the title of the appellant was in derivative title from the original landlord, are matters that arise in this appeal. Reference was made to the case of ***Imbuldeniya v. D. De Silva [1987] 1 Sri. L.R. 367*** which dealt with an identical situation where it was stated that, "...the tenancy which Gunawardena granted to the Defendant will not bind the Plaintiff who at all relevant times was the true owner of the premises; the plaintiff would be

*entitled to an order evicting the Defendant who is a trespasser as against her.”*

13. The learned Counsel further submitted that, although the case of *Imbuldeniya(supra)* was brought to the notice of the Civil Appellate High Court, there was no reference as to why the ratio in that case would not apply to the present case or could be distinguishable on facts.
14. It was further submitted that, the Civil Appellate High Court erred in taking the view that the appellant was not entitled in law to seek eviction, when the tenancy of the respondent with *Dean* was intact. Since the appellant’s title was not derived from the father, she was not bound by the tenancy created by the father and there could not have been an automatic succession to the position of landlord, in the manner found in the Civil Appellate High Court on the strength of ***Izadeen Mohamed v. Singer Sewing Machine [1962] 64 N.L.R. 407*** and ***Bhojraj v. Abdulla [1998] 1 Sri.L.R. 1*** which dealt with distinguishable situations where new purchasers would be compelled to accept sitting tenants.
15. The learned Counsel for the appellant further submitted that, the respondent asserting lawful tenancy under the father of the appellant, did not bother to reply and/ or dispute the contents of the said letter [‘P-8’] which was sent by an Attorney-at-Law on instructions. This being a business and/ or an official letter challenging the right of the recipient to occupy the property in suit, it is incumbent on the recipient to dispute the facts therein. Reference was made to the case of ***Saravanamuttu v. De Mel [1948] 49 N.L.R. 529*** where it was held that, the failure or silence of the recipient of a business letter indicating that a certain state of facts exists, amounts to an admission of the truth of the allegations contained in that letter. The inference drawn from the silence is that, the contents of the letter were true and that the respondent did not assert any tenancy under the appellant.
16. The learned Counsel further submitted that, although the notice[‘P-8’] did not contain a request by the appellant to the respondent asking her to attorn the appellant as the landlord, the respondent could have availed herself of the opportunity to attorn, in which event the appellant would have to elect

either to accept attornment to treat the respondent as a tenant or to deny attornment to treat the defendant as a trespasser.

17. It was further submitted by the learned Counsel that, even after the receipt of the letter [‘P-8’] the respondent had deposited money in a Bank of Ceylon account in favour of *Dean* from April 2008 to October 2008 [receipts marked ‘V-41’-‘V-46’]. According to the case of ***Violet Perera v. Asilin Nona [1996] 1 Sri.L.R. 1*** depositing rent in favour of *Dean* after the receipt of the letter [‘P-8’] cannot be treated as a proper payment made to the landlord, as the appellant has held out that she is the owner of the premises in suit.
18. The learned Counsel further submitted that, if the respondent was confronted with a situation in which she was in doubt as to whom the payment should be made, the simplest thing should have been to reply to [‘P-8’] asking for more particulars and attorned to the appellant by offering to pay rent to her.
19. It was further submitted that, the appellant cannot be faulted for sending the said letter [‘P-8’] as she was not bound by the contract of tenancy created by the father, and it was incumbent on the respondent to indicate her position coupled with an offer to pay rent to the appellant. The conduct of a reasonable person under normal circumstances would have been to send a reply asking for further details. Further, the fact that the address indicated in the notice[‘P-8’] being similar to the address of *Dean* [receipts D15-D16 at pages 272,273 of the appeal brief] is an additional reason for the respondent to have responded to the notice [‘P-8’].
20. The learned Counsel for the appellant further submitted that, the respondent should not be allowed to insist on the privity with *Dean* by keeping silent as the respondent has not acceded to the demand in [‘P-8’] and continued to occupy the premises when the contract of tenancy was being challenged by the contents of letter [‘P-8’].
21. The learned Counsel further submitted that, assuming but not conceding that the letter [‘P-8’] was not a notice to attorn, the contents as indicated by a legal professional on instructions, should not have been ignored on the basis that the appellant was not entitled to send such notice.



22. It was further submitted that, although a presumed contract of tenancy was created when the respondent was confronted with the demand of vacation on the letter [‘P-8’] and the respondent continued to occupy the premises, the said presumed contract of tenancy was set in nought by the conduct of the respondent in failing to indicate that she was a lawful tenant and/ or in tendering rent to the appellant. Mere deposit of rent in favour of the father without bothering to verify, could not have resulted in sustaining the said presumed contract of tenancy.

**Written submissions on behalf of the Respondent.**

23. The learned Counsel for the respondent submitted that, the principal matter that has to be decided by this Court is whether the respondent was in unlawful occupation of the premises. The title of the premises has been admitted in favour of the appellant.

24. It was submitted by the learned Counsel that, the appellant in cross examination on 14.07.2010 (pages 85-88 of the appeal brief) by admitting the signature of the rent receipts to be that of her father’s [marked ‘V-1’-‘V-14’] corroborates the position of the respondent that she was not a trespasser but was occupying the premises as a tenant of *Dean*.

25. It was further submitted that, according to the evidence of the appellant (at pages 65, 66, 67 and 93 of the appeal brief), her father, *Dean*, has been managing the premises in suit on behalf of the appellant with her implied agreement in the capacity of an agent. An agency is implied from the special circumstances of this case, and the appellant as the principal was bound by the contracts entered into by her agent. Therefore, a valid tenancy existed between the appellant’s father and the respondent and the appellant was bound by the contract of tenancy created by her father though he was not her predecessor in title.

26. The learned Counsel further submitted that, even after being aware that a business was in operation for 20 years in the premises, the appellant by not raising her concerns has acquiesced the same (pages 69 and 70 of the appeal brief).

27. It was submitted by the learned Counsel that, the case of ***Imbuldeniya v. D. De Silva [1987] 1 Sri. L.R. 367***, has no bearing to the facts of the instant case as the facts are quite different.
28. The learned Counsel further submitted that, as the lawful tenancy that existed between the appellant's father and the respondent was not terminated in law, the appellant upon assuming control over the premises in suit has to first notice the respondent to accept her as a tenant upon attornment. If no such notice is given, the original tenancy subsists. Reference was made to the case of ***Izadeen Mohamed v. Singer Sewing Machine Co. [1962] 64 N.L.R. 407***. Where it was held that, "*If the purchaser fails to give notice of election to the tenant, the contract of tenancy between the vendor and the tenant subsists and it is only the vendor who is competent to terminate that contract of tenancy*".
29. It was further submitted that, the said notice to quit cannot be considered in law as a notice to attorn. Reference was made to the meaning of the term attornment as described in ***Wille, Principles of South African Law 4<sup>th</sup> edition at page 176***. Accordingly, it occurs when there is an agreement between the owner, the intended transferee, and agent to the effect that the agent is from then on to hold the thing for the transferee. It was submitted that no such agreement existed between the parties as no evidence was led to that effect by the landlord *Dean*, requesting the respondent to attorn the tenancy to the appellant and to consider the appellant as the new landlord.
30. The learned Counsel further submitted that, the respondent's continued occupation in the premises in suit, following the receipt of the notice dated 25.03.2008 ['P-8'] would create a privity of contract between the appellant and the respondent if and only if the said letter consists of a notice of the appellant's election to recognize the respondent as a tenant. Reference was made to the case of ***Seelawathie v. Ediriweera [1989] 2 Sri.L.R. 170***. However, the aforesaid notice to quit did not consist of an intention of the appellant to recognize the respondent as a tenant, but that the respondent was in unlawful and illegal occupation of the premises in suit.

31. It was submitted by the learned Counsel that, the failure on the part of the respondent to reply to the letter [‘P-8’] does not give rise to an adverse inference against the respondent, as she was unaware of the change in ownership of the premises and bona fide accepted *Dean* as her landlord. Further, there was no necessity for the respondent to reply to a letter sent by a complete stranger.
32. It was further submitted that, in the case of ***Saravanamuttu v. De Mel [1948] 49 N.L.R. 529***, exceptions to the rule requiring a person who does not agree with the contents of a letter to dispute the assertions have been set out. “... *For example, failure to reply to mere begging letters when the circumstances show that there was no necessity for the recipient of the letter to reply can give rise to no adverse inference against the recipient.*”
33. The learned Counsel made reference to the case of ***Disanayake Mudiyanseelage Chandrapala Meegahaarawa v. Disanayake Mudiyanseelage Samaraweera Meegahaarawa SC Appeal No. 112/2018, S.C. min. 21.05.2021***, where the impact of the failure to reply to a letter was discussed and where it was stated that, the impact of the failure to reply would depend on the facts and circumstances of each case.
34. It was further submitted by the learned Counsel that, the said quit notice cannot be considered in law as a notice to attorn since the said letter does not consist of a notice of the appellant’s election to recognize the respondent as a tenant.
35. The learned Counsel for the respondent further submitted that, the learned High Court Judges in affirming the judgment of the learned District Judge, has carefully arrived at the conclusion that the document marked [‘P-8’] cannot in any conceivable sense be considered as a notice of attornment. In any event, by the time the letter [‘P-8’] was sent, the defendant was not in illegal occupation of the premises.
36. The learned Counsel further submitted that, according to the document marked [‘P-5’] (at page 215 of the appeal brief) as at the date the letter marked [‘P-8’] was sent, and at the time action was instituted, *Dean* had been alive. It was submitted by the learned Counsel that, a valid contract of tenancy was in

subsistence between the respondent and *Dean* even at the time of filing action.

37. It was further submitted that, the appellant could not have instituted the instant action against the respondent, without having repudiated the contract of tenancy that existed between her father and the respondent.
38. I will first answer the question of law set out in Paragraph 15(ii) of the petition.  
Did the Courts below err in law by failing to take into account that the tenancy created by the father without a title to the premises in suit, was not binding on the plaintiff?
39. When considering the testimony of the appellant, the appellant in cross examination on 14.07.2010 (at pages 85-88 of the appeal brief) has admitted the signature of the rent receipts [marked 'V-1'-'V-14'] to be that of her father's. Therefore, it can be established that a valid contract of tenancy subsisted between the father of the appellant and the respondent.
40. Further, according to the evidence of the appellant, she has consistently stated that her father *Dean*, has been managing the premises in question ever since he got married to the appellant's mother. Accordingly, when considering the circumstances of this case, an agency can be inferred as the appellant has allowed her father to continue to manage the premises even after her mother transferred the property to her. It can be stated that, the father of the appellant was acting as an agent of the appellant under the implied agreement of the appellant. Where an agency is inferred, when the agent (father of the appellant) enters into a contract with the respondent, the principal (appellant) would be bound by such contract. Therefore, in the circumstances of this case, as a valid tenancy existed between the appellant's father and the respondent, the appellant being the principal will be bound by the contract of tenancy created by her father.
41. The learned Counsel for the appellant submitted that, the case of *Imbuldeniya(supra)* dealt with a similar situation, however, although this case was brought to the attention of the Civil Appellate High Court, reference has not been made as to why

the case of *Imbuldeniya(supra)* is not applicable to the instant case.

42. However, the learned Counsel for the respondent pointed out that, the case of *Imbuldeniya(supra)* has no bearing to the facts of the instant case, as the facts of it are different to the instant case.

43. When considering the facts of the case of *Imbuldeniya(supra)*, the father of the plaintiff has let out the premises to the defendant and appropriated the rent for himself. He has done so for his own benefit without the authority from the plaintiff. At the time the property was let out, the plaintiff was not aware that she was the absolute owner. Further, when the father rented the premises to the defendant, he was not acting as her agent. The father had no right or any authority to rent out the premises to the defendant. The plaintiff neither acquiesced in or adopted the letting by her father to the defendant.

44. Thus, as the case facts of *Imbuldeniya(supra)* are not similar to the instant case, the finding of that case cannot be applied to the instant case where the evidence leads to the inference that an agency was present between the appellant and the father of the appellant and even after knowing the appellant was the absolute owner, she continued to let her father manage the property in suit.

45. With regard to the first question of law that has been raised, it is my view that, in light of the evidence and the facts and circumstances of the instant case, the courts below have not erred in law and have correctly come to the conclusion that the tenancy created by the father of the appellant is binding on the appellant.

46. Now I will consider the second question of law that has been set out in paragraph 15(iv) of the petition.  
Did the Courts below err in law by not following the legal consequences flowing from the failure of the defendant to respond to letter 'P8'?

47. The learned Counsel for the appellant by relying on the case of ***Saravanamuttu v. De Mel [1948] 49 N.L.R. 529*** took the

position that, as the respondent did not reply or dispute the contents of the letter [‘P-8’] it amounts to an admission of the truth of the allegations contained in that letter.

48. The respondent took the position that, the case of *Saravanamuttu(supra)*, sets out exceptions to the rule requiring a person who does not agree with the contents of a letter to dispute the assertions. “... *For example, failure to reply to mere begging letters when the circumstances show that there was no necessity for the recipient of the letter to reply can give rise to no adverse inference against the recipient.*”

49. Further, in the case of ***Disanayake Mudiyanseelage Chandrapala Meegahaarawa v. Disanayake Mudiyanseelage Samaraweera Meegahaarawa SC Appeal No. 112/2018, S.C. min. 21.05.2021***, it was stated,

*“However, I must add that although it is a general principle that failure to answer a business letter amounts to an admission of the contents therein, this is not an absolute principle of law. In other words, failure to reply to a business letter alone cannot decide the whole case. It is one factor which can be taken into account along with other factors in determining whether the Plaintiff has proved his case. Otherwise, when it is established that the formal demand, which is a sine qua non for the institution of an action, was not replied, judgment can ipso facto be entered for the Plaintiff. That cannot be done. Therefore, although failure to reply a business letter or a letter of demand is a circumstance which can be held against the Defendant, it cannot by and of itself prove the Plaintiff’s case. The impact of such failure to reply will depend on the facts and circumstances of each case.”*

50. Further, in the case of ***Wickremasinghe v. Devasagayam [1970] 74 N.L.R. 80*** Weeramantry J stated that, although the failure to reply to a letter is a circumstance which may be urged against the defendant, it cannot by itself prove the plaintiff’s case.

51. Thus, in light of the findings in the above cases, it is my view that, when considering the facts and circumstances of the

instant case, the failure of the respondent to reply to the letter [‘P-8’] would not in itself amount to an admission of the truth of the contents of that letter.

52. Therefore, it is my view that, the Courts below have not erred in law when deciding on the legal position following the respondent’s failure to reply to the letter [‘P-8’].
  
53. Thirdly, I will answer the final question of law set out in paragraph 15(vi) of the petition.  
Whether the Courts below err in law by the finding that the tenancy of the defendant would continue notwithstanding the repudiation of the presumed conduct by her, after the receipt of ‘P8’.
  
54. The appellant took up the position that, although a presumed contract of tenancy was created when the respondent continued to occupy the premises even after the letter [‘P-8’] demanding vacation, this contract was repudiated when the respondent failed to indicate that she was a lawful tenant and failed to pay rent to the appellant.
  
55. It was brought to the attention of this Court that, according to the document marked [‘P-5’] (page 215 of the appeal brief), the father of the appellant had been alive when the said letter [‘P-8’] was sent by the appellant to the respondent. The letter [‘P-8’] was sent on 25.03.2008 and the death of the appellant’s father had occurred on 07.07.2008 [‘P-5’]. Further, action has also been instituted on 30.04.2008 [plaint ‘X-1’] which is before the death of the appellant’s father. Therefore, a valid contract existed between *Dean* and the respondent at the time the letter [‘P-8’] was sent, and also at the time action was instituted by the appellant.
  
56. Thus, as the appellant was not entitled to send the letter [‘P-8’] while her father was alive, it is my view that, the Courts below have not erred in law by finding that the tenancy of the respondent would continue even after the receipt of the letter [‘P-8’].

**Declaration.**

57. As all three questions of law have been answered in the negative, I hold that the respondent is not a trespasser but a lawful tenant. I affirm the judgments of the District Court and the Civil Appellate High Court of *Colombo*. The appeal is dismissed with costs.

*Appeal dismissed.*

**JUDGE OF THE SUPREME COURT**

**JUSTICE S. THURAIRAJA, PC.**

I agree

**JUDGE OF THE SUPREME COURT**

**JUSTICE KUMUDINI WICKREMASINGHE.**

I agree

**JUDGE OF THE SUPREME COURT**