

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

The Incorporated Trustees of the  
Sathya Sai Baba Trust of Sri  
Lanka.

Of No. 113, New Chetty Street,  
Colombo 13.

**Plaintiff**

**Vs.**

Cine Printers Limited,  
No. 117, New Chetty Street,  
Colombo 13.

**Defendant**

**SC. Appeal 08/2011**

SC/HCCA/LA 136/2010  
Hc. (Civil) Appeal Col. 292/2007 (F)  
D.C. Colombo No. 20682/L

**And**

The Incorporated Trustees of the  
Sathya Sai Baba Trust of Sri  
Lanka.

Of No. 113, New Chetty Street,  
Colombo 13.

**Plaintiff-Appellant**

**Vs.**

Cine Printers Limited,  
No. 117, New Chetty Street,  
Colombo 13.

**Defendant-Respondent**

**And Now Between**

Cine Printers Limited,  
No. 117, New Chetty Street,  
Colombo 13.

**Defendant-Respondent-  
Appellant**

**SC. Appeal 08/2011**

**Vs.**

The Incorporated Trustees of the  
Sathya Sai Baba Trust of Sri  
Lanka.  
Of No. 113, New Chetty Street,  
Colombo 13.

**Plaintiff-Appellant-  
Respondent**

\* \* \* \* \*

**BEFORE** : **Tilakawardane, J.**  
**Wanasundera, PC.J. &**  
**Marasinghe, J.**

**COUNSEL** : C.E. de Silva for the Defendant-Respondent-Appellant  
instructed by Ms. P. Narendran with Ms. B. Senarath.  
  
Wijayadasa Rajapaksha PC., with Kapila Liyanagamage for  
the Plaintiff-Appellant-Respondent.

**ARGUED ON** : **02.12.2013**

**DECIDED ON** : **23.01.2014**

\* \* \* \* \*

**Wanasundera, PC.J.**

In this case leave was granted to the Defendant-Respondent--Appellant (hereinafter referred to as the Appellant) from the judgment of the Civil Appellate High Court of the Western Province dated 26.03.2010 on the questions of law set out in paragraph 15(d) of the Petition dated 07.05.2010 which reads as follows:-

15(d) "Did the High Court err in not holding that the Petitioner had attorned to the Respondent and is the tenant of the Respondent in respect of the premises in suit".

The Plaintiff-Appellant-Respondent (hereinafter referred to as the Respondent) instituted action in the District Court of Colombo against the Appellant seeking an order to eject the Appellant from the premises bearing No. 111, New Chetty Street, Colombo 13, for the reason that the Appellant had failed and neglected to accept the Respondent as the landlord with effect from 1<sup>st</sup> of January 2005. The Appellant had been the tenant of S.R.G. Corea at one time and who died later on. Her children requested the Appellant to attorn to one of them, namely F.E.S. Corea which the Appellant had failed to do. So, the children of the dead landlord sold the premises in suit to the Respondent in December 2004.

The Respondent as well as the children of the deceased landlord sent letters to the Appellant in December 2004 after the transfer of ownership of the premises, requesting the Appellant to accept the Respondent as the landlord and to pay rent to the Respondent with effect from 1<sup>st</sup> January 2005. The Appellant failed and neglected to do so, which resulted in the Respondent filing action in the District Court for ejectment of the Appellant from the premises in question.

At the end of the trial the Additional District Judge delivered the judgment on 31.1.2007 dismissing the action filed by the Respondent. The Respondent appealed to the Provincial High Court of Civil Appeal. On 26.3.2010 the High Court delivered judgment to the effect that the District Court judgment is set aside and a de novo trial should be held before another Judge of the District Court. Now the Appellant is before this Court challenging the High Court judgment.

The points of contest are (1) whether the Appellant had attorned to the Respondent, the new landlord, (2) whether the Appellant was a tenant of the Respondent in respect of the premises in suit, at the time action was filed in the District Court and (3) if the Appellant was not a tenant attorned to the

Respondent, in turn does he become a trespasser and is the Respondent entitled to eject him from the premises in question.

The Appellant a company incorporated in 1956 had been the tenant of Sheila G. Corea after she became the owner of the premises in suit in 1978. When she died, her five children became the owners of the said premises in 1999 by a deed of administration at the end of a testamentary case. The children wrote to the Appellant and wanted one of them i.e. Florence E.S. Corea to be attorned as the landlord in the year 2000. The Appellant neither recognized that person as landlord nor paid any rent. Thereafter the five children of the very first landlord of the Appellant sold the premises to the Respondent on 04<sup>th</sup> October 2004.

The premises in suit is business premises in Colombo 13. On 02.12.2004 the Respondent wrote to the Appellant and requested to attorn to the Respondent as landlord and pay all rentals with effect from 01.01.2005. The Appellant Company replied on 20.01.2005 stating that it is 'willing to attorn' to the Respondent but requested the Appellant to send a copy of the deed of title even though the letter dated 02.12.2004 contained all the details of the title deed of the Respondent. I am of the view that the Appellant Company is not legally entitled to call for evidence of title when it is possessed of the details from which it could find out and confirm the ownership of the Respondent regarding the premises. Yet, the Appellant did not pay the rentals nor did it write to the Respondent accepting the Respondent as the landlord and as such attorning to the Respondent. In summary there was no specific acceptance of the new landlord or any action taken, considering the Respondent as landlord as no rent was paid. It was not only the Respondent who wrote to the Appellant requesting the Appellant to attorn to the Respondent but also the Respondent's predecessors by letter dated 03.12.2004, even though the Appellant had even by then failed and neglected to attorn to the one person out of five and pay rent to that person from 1999 to 2004 December.

At this point, I observe that the Appellant had repudiated its tenancy long before the Respondent requested that the Respondent be attorned as the landlord by not having attorned to Florence E.S. Corea as the landlord and not having paid rent to her even though the owners, the five children of Sheila G. Corea never went to Courts to eject the Appellant which they could have done. Nevertheless the Respondent the purchaser of the property had requested that the Respondent be attorned and paid rent from 01.01.2005.

It is only after the Respondent filed action in the District Court to eject the Appellant that the Appellant sent a money-order by post to the Respondent for a sum of rupees 2000/- calculating at the rate of Rs.500/- per month, i.e. the monthly rental paid by the Appellant in 1979 to the 1<sup>st</sup> landlord Sheila G.Corea. The Respondent did not accept the same as the Respondent had by then already filed a legal action in the District Court for ejection. Then the Appellant had paid rent to the authorized person, the Municipal Council of Colombo on 28.7.2005, Rs.2000/- and on 21.10.2005 /- Rs. 3000/- which is there as a deposit up to date.

Before the Appellant appealed to this Court it had two judgments, one in the District Court and the other in the Civil Appellate High Court. Unfortunately both these Courts had not analysed the evidence and concluded the matter in a proper way.

**The Appellant's Counsel argued that he is the tenant of the premises in suit and that he is not a trespasser therein.** Counsel for the Appellant referred Court to the following cases-

1. S.M.J. Fernandos Vs. W.R.S. Perera 77 NLR 220
2. David Silva Vs. Madanayake 1967, 69 NLR 396
3. E.A. Wahabdeen and two others vs. M.S.A.C.M. Abdul Carder and another 79, 2 NLR 462
4. Sabapathypillai Vs. Ramupillai 58 NLR 367
5. K.P. Punchi Nona Vs. T. Hendrick Perera 73 NLR 430
6. E.N. Fernando Vs. G. Wijesekera 73 NLR 110

7. Sameen and another Vs. Ceylon Hotels Ltd. 1989 1 SLR 81
8. Seelawathie vs. Ediriweera 1989 2 SLR 170
9. Gunasekera vs. Jinadasa 1996 2 SLR 115

**The Respondent's Counsel argued that the Appellant did not attorn to the Respondent and is not the tenant of the Respondent and that he is a trespasser** and should be ejected from the premises. Counsel referred Court to the following cases:-

1. Seelawathie vs. Ediriweera 1989 2 SLR 170
2. Gunasekera vs. Jinadasa 1996 2 SLR 115
3. Silva vs. Jayasinghe 2008 BLR Part II pg. 56

In the case of ***Seelawathie Vs. Ediriweera 1989 2 SLR 170***, the scenario was totally different from the present case. In that case, the tenant expressly refused to attorn to the new landlord, the transferee, in the deed of change of ownership. Fernando, J. has summarized the crucial matter in that case thus:- "The crucial matter for decision in this appeal is whether a tenant who remains in occupation of the rented premises, after receiving notice of the transfer and of the purchaser's election, has thereby exercised the option to become the tenant of the purchaser; or whether a tenant is entitled, while continuing to remain in occupation, to refuse to accept the purchaser as his landlord". Fernando, J. gave judgment in favour of the new landlord, against the tenant for arrears of rent, damages and ejectment with costs. The rent of the said house was only Rs.96/-. In the present case, the tenant did not expressly refuse or expressly attorn to the landlord and did not start paying any rent, even though in the year 2005, Rs.500/- per month as rent could be considered a paltry amount for business premises in Colombo 13.

I am of the view that any tenant should pay the landlord the proper rent monthly as agreed and continue to pay the rent at all times promptly, the reason being that the tenant is occupying the premises belonging to another i.e. the landlord. The tenant has a bounden duty to pay the rent. The Rent Act No. 7 of 1972 was never intended to give any chance for a tenant to be without paying rent to the

landlord but to protect the poor tenants who were subject to harassment by landlords in that era.

In the present case, the premises in suit was admitted by both parties not to be 'excepted premises' under the Rent Act and therefore it is governed by the Provisions of the Rent Act and Amendments thereto.

In a more recent case, i.e. in the case of ***Gunasekera Vs. Jinadasa 1996 2 SLR 115***, Fernando, J. at the very outset mentioned thus:- "When this appeal first came up for hearing, Mr. Goonesekera for the Plaintiff submitted that it was necessary to reconsider the series of decisions (referred to in ***Seelawathie Vs. Ediriweera***) in which it had been held that continuation in occupation by the tenant, with notice of the transferee's election to recognize him as the tenant, constitutes an exercise of the tenant's option to acknowledge the transferee as land-lord; and also that there now arose for decision the question left open in ***Seelawathie Vs. Ediriweera*** whether such a transferee was entitled, either in addition or in the alternative, to claim relief based on title. This appeal was thereupon referred to this bench of five Judges in terms of Article 132(3) of the Constitution, as an important question of law was involved whether in those circumstances a transferee is entitled to institute a vindicatory action instead of a tenancy action."

I observe that it is the decision in ***Seelawathie Vs. Ediriweera*** which has given cause to the decision of ***Gunasekera Vs. Jinadasa***. Even though this 5 Judge Bench has not overruled the ***Seelawathie Vs. Ediriweera*** case, Fernando, J. expounds thus;- "It seems to me that while it is legitimate initially to infer attornment from continued occupation, thus establishing privity of contract between the parties, another principle of the law of contract comes into play in such circumstances to which the presumption of attornment must sometimes yield. When the occupier persists in conduct which is fundamentally inconsistent with a contract of tenancy, and amounts to a repudiation of that presumed contract, the transferee has the option either to treat the tenancy as subsisting, and to sue for arrears of rent and ejectment or to 'accept' the occupier's

repudiation of the tenancy and to proceed against him as a trespasser”. “When the Defendant, having failed expressly to accept the Plaintiff as landlord, thereafter failed to pay him the rent for several months after 16.11.1981, and instead deposited that rent to the credit of the former landlord, he repudiated the fundamental obligation of a tenancy, he denied the Plaintiff’s status as landlord and did not pay rent due to him – a paltry sum of Rs.30/- per month.”

I observe that in the instant case also the rent due was only a paltry sum of Rs.500/- for a business premises on 14.3. perches of land in Colombo 13, which the Appellant failed to pay with effect from 01.1.2005. The Appellant failed to expressly declare his acceptance of the new owner, the transferee in the recent deed of transfer either. So, I conclude that the Appellant has repudiated the fundamental obligation of a tenancy.

Fernando, J. further on, expressed his views in ***Seelawathie Vs. Ediriweera*** as follows:- “The position might have been different if the Defendant had duly discharged his tenancy obligations for a period as for instance by paying rent to the Plaintiff and had defaulted thereafter”. I agree with Fernando, J. totally and wish to state that in the instant case also instead of stating that the Appellant was willing to attorn and not having paid for the months starting on 01.1.2005, if the Appellant commenced payments from the due date, i.e. 01.01.2005 and went on for several months paying the rent and then defaulted, the position would have been different.

I am of the view that only continuous occupation of the premises by itself does not in any way give any right to the tenant to be legally treated as a rightful tenant of the transferee when the ownership of the premises is transferred by the landlord to another person. The tenant has to expressly attorn to the new landlord and continue to pay the rent to the transferee from the day of the receipt of the notice of the new transfer, if he wants to keep the contract of tenancy. In the instant case, the tenant wrote that he is willing to attorn and pay in the future and asked for a copy of the deed, which action of the tenant (Appellant) clearly shows that it has not expressly accepted the transferee, having doubts about the



transfer and also did not commence payment or pay until action was filed by the Respondent. After the action was filed only, the Appellant paid the rent to the Municipal Council, the authorized person under the Rent Act.

It is again, interesting to note that in ***Gunasekera Vs. Jinadasa***, Fernando, J. commented as follows:-

“This interpretation commends itself to me as being consistent also with **equity** and **fairness**. The Court must not apply the presumption of attornment as a trap for the transferee; allowing the occupier who fails to fulfil the obligations of a tenant, **if sued on the tenancy**, to disclaim tenancy and assert that he can only be sued for ejectment and damages in a vindicatory action; but **if faced with an action based on title**, to claim that notwithstanding his conduct he is a tenant and can only be sued in a tenancy action. Since it is the occupier’s conduct which gives rise to such uncertainty, equitable considerations confirm the option which the law of contract gives to the transferee.

The position might have been **Different** if the defendant had duly discharged his tenancy obligations for a period- as for instance by paying rent to the Plaintiff- and had defaulted only thereafter”.

In ***Silva Vs. Jayasinghe reported in 2008 Bar Association Law Reports Part II at page 56***, it was held that “where the tenant continued to occupy the premises let to her without attorning or paying rent to the new owner despite having noticed by his former landlord to do so, she (the Defendant-Respondent-Respondent) is liable to be sued in ejectment.”

In the aforesaid circumstances, I hold that the Appellant’s conduct as the occupier of the premises has created this situation and the transferee has taken the correct path of suing the Appellant for ejectment and damages. I answer the questions of law on which leave to appeal was granted in the negative. For the aforementioned reasons I decide that the Appellant had not attorned to the Respondent and therefore the Appellant is not the tenant of the Respondent in

respect of the premises in suit. I direct that the Appellant and those who hold under him be ejected forthwith from the premises No. 111, New Chetty Street, Colombo 13. I order that costs of suit in this Court as well as in the High Court and the District Court be paid by the Appellant to the Respondent in this case. Appeal is thus dismissed with costs.

**JUDGE OF THE SUPREME COURT**

**Tilakawardane, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**Marasinghe, J.**

I agree.

**JUDGE OF THE SUPREME COURT**