

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

Govindan Prathaban,
146, Templers Road,
Mount Lavinia.

Plaintiff

SC APPEAL NO: SC/APPEAL/218/2012

HCCA NO: WP/HCCA/COL/354/2006(F)

DC COLOMBO CASE NO: 20125/L

Vs.

Kanapathi Ravindran,
420, Old Moors Street,
Colombo 01200.

Defendant

AND

Govindan Prathaban,
146, Templers Road,
Mount Lavinia.

Plaintiff-Appellant

Vs.

Kanapathi Ravindran,
420, Old Moors Street,
Colombo 01200.

Defendant-Respondent

AND NOW BETWEEN

Kanapathi Ravindran,
420, Old Moors Street,
Colombo 01200.

Defendant-Respondent-Appellant

Vs.

Govindan Prathaban,
146, Templers Road,
Mount Lavinia.

Plaintiff-Appellant-Respondent

Kankanage Nelun Perera,
146, Templers Road,
Mount Lavinia.

Substituted Plaintiff-Appellant-
Respondent

Before: Hon. Justice P. Padman Surasena
Hon. Justice Kumudini Wickremasinghe
Hon. Justice Mahinda Samayawardhena

Counsel: M.A. Sumanthiran, P.C. with Vijula Arulanantham for the
Defendant-Respondent-Appellant.
Saman Galappaththi with Isuru Perera for the Substituted
Plaintiff-Appellant-Respondent.

Written Submissions:

By the Plaintiff-Appellant-Respondent on 08.03.2013

By the Defendant-Respondent-Appellant on 22.06.2013

Argued on: 06.03.2024

Written Submissions:

By the Plaintiff-Appellant-Respondent on 04.04.2024

By the Defendant-Respondent-Appellant on 10.04.2024

Decided on: 10.05.2024

Samayawardhena, J.

The plaintiff filed action in the District Court of Colombo on 18.11.2003 seeking declaration of title to the premises No. 420, Old Moor Street, Colombo 12, ejectment of the defendant and those holding under him therefrom, and damages in a sum of Rs. 100,000 from 01.11.2003 until restoration of the plaintiff to vacant possession on the basis, *inter alia*, that the defendant sublet the premises in violation of the Lease Agreement. The defendant filed answer denying subletting and sought dismissal of the plaintiff's action. At the trial, only the plaintiff and the defendant gave evidence. The plaintiff produced documents marked P1-P7 in his evidence. After trial, the District Court dismissed the plaintiff's action on the basis that there was no subletting. On appeal, the High Court of Civil Appeal of Colombo set aside the judgment of the District Court on the basis that the defendant has sublet the premises and entered judgment for the plaintiff as prayed for in the plaint. The defendant is now before this Court against the judgment of the High Court. At the hearing, both parties agreed to confine the scope of argument to the question as to whether the High Court erred in law in concluding that the defendant had sublet the premises in question.

The premises in suit are excepted premises under the Rent Act, No. 7 of 1972. The premises were admittedly leased to the defendant for 75 years by Lease Agreement marked P1 dated 18.05.1987 subject to the terms

and conditions stated therein. Clause (f) of the Lease Agreement compels the defendant lessee “*not to sublet or give on commission or part with possession of the demised premises or any part thereof without the prior written permission of the Lessor.*” The crux of the plaintiff’s complaint is that the defendant sublet the premises to the limited liability company, Ajantha Hardwares (Private) Limited, without his written consent. The defendant admits that the business in the premises is carried on by Ajantha Hardwares (Private) Limited.

According to the official documents relevant to the said company which were compendiously marked P4, the registered office of the company is situated at the demised premises and there are four directors of the company including the defendant.

The defendant’s position is that when he entered into the Lease Agreement in 1987, there was no name for his business, and the business was later carried on under the name Bright Steel (Private) Limited, and in the year 2000, the business name was again changed to Ajantha Hardwares (Private) Limited. Although it is submitted that the defendant carried on the business in the premises under the name of Bright Steel (Private) Limited prior to carrying on the business under the name of Ajantha Hardwares (Private) Limited, the defendant did not mention Bright Steel (Private) Limited in his evidence. His evidence regarding who carried on the business was evasive. He attempted to suggest that there was a partnership business. However, he did not produce any document to prove a partnership business, nor did he at least disclose the names of such partners. His evidence in Court was Ajantha Hardwares (Private) Limited is a partnership business, which is incorrect in the teeth of the documentary evidence marked P4.

The defendant also attempted to suggest that the plaintiff did not object the business being carried on under the name of Bright Steel (Private)

Limited. According to the police complaint made by the plaintiff on 02.10.2000 marked P2, when the defendant was carrying on the business under the name Bright Steel (Private) Limited, the plaintiff had already filed another case against the defendant seeking to eject him from the premises in suit. In any event, Bright Steel (Private) Limited is only a business name, not an incorporated company. There is no evidence that a third party carried on the business under the name Bright Steel (Private) Limited.

The learned District Judge misdirected himself on the primary facts. He states at page 8 of the judgment that the defendant first carried on business through an incorporated company by the name of Bright Steel (Private) Limited and thereafter the name of the company was changed to Ajantha Hardwares (Private) Limited. There is no evidence that Bright Steel (Private) Limited is an incorporated company, nor did the defendant state so in his evidence. There is no evidence to suggest that the business was carried on by the same group of people under Bright Steel (Private) Limited and Ajantha Hardwares (Private) Limited.

The defendant did not give any reason as to why he wanted to incorporate a company to carry on the business. Even assuming that the defendant carried on a partnership business in the premises under the name Bright Steel (Private) Limited, it does not mean that the defendant can thereafter sublet or part with possession of the premises to an incorporated company.

The District Judge at page 6 of the judgment states that, from the list of directors of Ajantha Hardwares (Private) Limited found in P4 and from the evidence of both the plaintiff and the defendant, it has clearly been established that the defendant was the Chief Director (ප්‍රධාන අධ්‍යක්ෂකවරයා) of the company conducting the business in the premises. (මේ අනුව විත්තිකාර කනපති රචිතයන් නඩුවට අදාළ ස්ථානයේ සීමාසහිත අපේක්ෂා භාච්චේයාර් පෞද්ගලික සමාගම

නමින් හා එහි ප්‍රධාන අධ්‍යක්ෂකවරයා වශයෙන් අදාළ ව්‍යාපාර කටයුතු කර ගෙන යන බව ඉතා පැහැදිලිව සනාථ වී ඇත.) This is a grave misdirection on the primary facts.

As I stated previously, according to P4, there are four directors of the company and the defendant is only one of them. P4 includes Memorandum of Association and Articles of Association of the company. In those documents, each of these four directors has been designated as “Business Executive”. The defendant is not the Chief Director or the Main Director or the Managing Director. According to clause 6 of the Articles of Association, the Board of Directors can appoint a Managing Director. In any event, directors or business executives are not the owners of the company. They are employees of the company. According to clause 8 of the Articles of Association, the remuneration of the directors is decided by the Board of Directors or at a General Meeting of the company.

According to Article 5 of the Memorandum of Association of the company, *“The authorised share capital of the company is Rupees five million (Rs. 5,000,000) divided into fifty thousand shares (50,000) of Rupees one hundred (Rs. 100) each”*. This Article further states that all four directors are shareholders of the company and each of them holds one share valued at Rs. 100.

Contrary to what the District Judge states, it is abundantly clear that the defendant is not the controlling shareholder or controlling director of the company. According to Article 15 of the Articles of Association, the business decisions of the company are taken by the Board of Directors or at General Meetings. According to Article 10 of the Articles of Association, two directors form a quorum for a Board Meeting. In practical terms, the control of the company is with the other three directors.

The High Court is correct in concluding that there was subletting of the premises. The inclusion of the name of the defendant as a director and a shareholder of the company formed to carry on the business in the demised premises is a sham intended to conceal the subletting of the premises to a different legal entity, namely, Ajantha Hardwares (Private) Limited.

The premises were leased to the defendant who is a natural person. It was not leased to an incorporated body which is, in the eyes of the law, is a distinct legal personality. The defendant and the said incorporated company by the name of Ajantha Hardwares (Private) Limited are not the same.

The District Court has not considered any of these matters. It has gone on the wrong premise that it is none other than the defendant who is carrying on the hardware business in the premises as the Chief Director of Ajantha Hardwares (Private) Limited.

I answer the question of law on which leave was granted in the negative. The judgment of the High Court of Civil Appeal is affirmed and the appeal is dismissed. The District Court will now enter the decree as prayed for in paragraphs (a), (b) and (c) of the prayer to the plaint. The defendant is in unlawful possession of these valuable business premises in Pettah for more than 20 years from 01.11.2003. In addition to the damages, the plaintiff is entitled to recover all incurred costs in the District Court, the High Court and this Court from the defendant.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court