

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

In the matter of an application for
Leave to Appeal in terms of Section
5 (c) (1) of the High Court of the
Provinces (Special Provisions)
Amendment Act No.54 of 2006.

SC Appeal No:-82/2014

SC/(HC)CALA/ 111/2013

WP/HCCA/MT/134/2007(F)

DC MT.Lavinia case No:-624/01/RE

M.I.S.Batchu,
No.19, Lily Road,
Wellawatta,Colombo 6.

PLAINTIFF

V.

L.E.Muttiah,
No.19A, Lily Road,
Wellawatta, Colombo 6.

DEFENDANT

AND BETWEEN

L.E.Muttiah, (Deceased)

No.19A. Lily Road,

Wellawatta, Colombo 6.

DEFENDANT-APPELLANT

M.S.Muttiah,

No 19A, Lily Mawatha,

Wellawatta, Colombo 6.

SUBSTITUTED-DEFENDANT-APPELLANT

V.

M.I.S.Batchha,

No 19, Lily Road,

Wellawatta, Colombo 6.

PLIANTIFF-RESPONDENT

AND

M.I.S.Batchha,

No 19, Lily Road,

Wellawatta, Colombo 6.

PLAINTIFF-RESPONDENT-PETITIONER

V.

M.S.Muttiah,

No.19A, Lily Mawatha,

Wellawatta, Colombo 6.

SUBSTITUTED-DEFENDANT-APPELLANT-RESPONDENT

BEFORE:- S.E.WANASUNDERA,PC, J.

H.N.J.PERERA, J.

P.S.JAYAWARDENA, PC, J.

COUNSEL:- Ranjan Suwandarathne,PC with Anil Rajakaruna for the
Plaintiff-respondent-Appellant

D.P.Mendis, PC, with J.G.Sarathkumara instructed by
Pieris & Pieris for the Substituted-Defendant-Appellant
Respondent

ARGUED ON:- 29.01.2018

DECIDED ON:- 22.03.2018

H.N.J.PERERA, J.

The Plaintiff-Respondent-Petitioner Appellant (here-in-after referred to as the Appellant) made this application for Leave to Appeal against the judgment of the civil Appellate High Court of the Western province Holden at Mt.Lavinia delivered on 27.02.2013. The Civil Appellate High court by its judgment dated 27.02.2013 set aside the judgment of the learned District Judge which was in favour of the Plaintiff and entered judgment in favour of the Defendant-Appellant-Respondent-Respondent (here-in-after referred to as the Defendant) and dismissed the Plaintiff's action with costs. This Court on 09.06.2014 granted leave to appeal on the questions set out in paragraph 40 (a), (b) and (c) of the Petition dated 15.03.2013.

40(a) Have the Hon. High Court Judges of the Civil Appeal High Court err in law by holding that the owner contemplated in Section 2 (4)(c) of the

Rent Act No.7 of 1972 as amended by Act N0 55 of 1980 is the present owner who has instituted action?

40(b) Have the Hon. High Court Judges totally misdirected themselves in determining that the word “owner” does not include the “owner” as at 1st January 1980?

40(c) Have the Hon. High Court Judges err in law by failing to consider the fact that the Petitioner has proved beyond any doubt that the predecessor in title of the Petitioner were in occupation of premises No.19A which is the subject matter of the said District Court action on 1st of January 1980 and therefore let the same to the deceased Appellant in arriving at their final conclusion?

According to the Plaintiff the original Defendant came into occupation of premises which is part of No 19 Lily Avenue, Wellawatta under one Mohamed Ashraff Gouse, Shahul Hameed Mohamed Gouse and Fathima Gouse. The present Plaintiff bought the said premises on 06.07.1987. It is the plaintiff’s position that after he had purchased the entirety of the premises he requested the original Defendant (deceased) to attorn to him, which was done.

The evidence led in this case clearly establishes the fact that the current owner –the Plaintiff never occupied the premises in 1980 and that he became the owner of the said premises only in 1987.

It was the position of the Plaintiff that the said premises in suit (19A) is a residential premises and the same was occupied by the owner on 1st January 1980, and rented out the said premises after the that date, and as such the premises are excepted from the application of the provisions of the Rent Act No. 7 of 1972 as amended by Act No.55 of 1980. It was the contention of the learned Counsel for the Defendant that the subsequent owner who buys over the head of the tenant cannot get the benefit under the provisions (section 22(7)) of the Rent Act as amended by Act No 55 of 1980.

Section 2(4)(c) reads thus:-

“So long as this Act is in operation in any area, the provision of this Act shall apply to all premises in that area, other than –

(a).....

(b) residential premises constructed after January 1, 1980 and let on or after that date:

(c) residential premises **occupied by the owner on January 1, 1980,**

And let on or after that date”

(d).....

Therefore if any residential premises **occupied by the owner** of the property as at 1st January 1980 and **let thereafter**, such premises are considered as excepted.

It is very clear that these amendments to the Rent Act section 2(4)(b) & (c) was brought about in 1980 to encourage the construction of new houses and also to encourage the owners of premises who were occupying the said premises on 1st January 1980 to rent out the said premises to tenants. And for that purpose such premises rented out for the **first time** after construction in January 1980 and those premises where occupied by owners on 1st January 1980 and rented out to a tenant thereafter, were exempted from the application of the provisions of the Rent Act.

Where exemption from the Rent Act is claimed on the basis of section 2(4)(c) of the Rent Act the onus is on the Plaintiff to prove,

(1)That the premises were residential premises

(2)That the owner was in occupation of the premises on 1st January 1980.

(3)That the said premises were given on rent on or after the 1st January 1980

It was the position of the Plaintiff that the said premises were let to the Defendant after 1st January 1980. The learned trial Judge has in his impugned judgment stated that it is very clear from the answers given by the defendant in cross examination that he has come into occupation of the said premises after 1982. It was an admitted fact that the original defendant came to live in the said premises as a tenant under Mr.Gouse. It is also not disputed by parties that the original owner Mr.Gouse was in occupation of the premises as at 1st January 1980. Further the learned Trial judge has held that that the Plaintiff had proved by producing documentary evidence that the original owner Mr.Gouse and members of his family was in occupation of the said premises in January, 1980.

It is also not in dispute that the Plaintiff became the owner of the premises and the Landlord of the Defendant only in 1987. It was contended by the Counsel on behalf of the plaintiff that, what the plaintiff had to prove in this case was that on 1st January 1980 the owners were in occupation of the premises in suit and that the defendant had come into occupation of the said premises as a tenant of the said owner after 1st January 1980. Very clearly the Plaintiff had proved that the owner Mr. Gouse and his family was in occupation of the premises on 1st January 1980.

It is clear that the Plaintiff being the new owner who has bought the said premises with the defendant as the tenant in 1987 can get the benefit of section 2(4)(c) of the Rent Act No 55 of 1980. The learned trial Judge's finding is supported by the admissions and oral and documentary evidence that was before court. The learned trial Judge clearly held that the Plaintiff who became the owner of the said premises in 1987 can get the benefit of section 2(4)(c) of the Rent Act.

In M.P.Munasinghe V. C.P.Vidanage 69 N.L.R 98 it was held that the jurisdiction of an appellate Court to review the record of the evidence in order to determine whether the conclusion reached by the trial

Judge upon that evidence should stand has to be exercised with caution.

Further in *Alwis V. Piyasena Fernando* 1993 (1) S.L.R 119 it was held that:-

“It is well established that findings of primary facts by a trial judge who hears and sees witnesses are not to be lightly disturbed in appeal.”

In *Gunawardene V. Cabral and Others* (1980) 2 Sri.L.R it was held that the appellate court will set aside the inferences drawn by the trial judge only if they amount to findings of facts based on:-

- (1) inadmissible evidence ; or
- (2) after rejecting admissible and relevant evidence; or
- (3) if the inferences are unsupported by evidence’ or
- (4) if the inferences or conclusions are not possible or perverse.

In the case before me I do not see that the findings of the Learned District Judge and the inference drawn by him are vitiated by any of these considerations. In my opinion, the Civil Appellate High Court had misdirected itself in fact and in law and had set aside the judgment of the trial Judge and had held with the Defendant- Appellant and dismissed the Plaintiff’s action with costs.

Quite contrary to the findings of the Civil Appellate High Court, the evidence led in this case revealed that the said premises were occupied by the owners of the said premises on 1st January 1980 and that the said premises had been rented out to the original defendant somewhere in 1982. It is quite evident from the pleadings of both parties that the original owner Mr. Gouse was in occupation of the said premises as at 1st January 1980 and the defendant became a tenant under the said Mr. Gouse after the said amendment came into operation. There is no requirement under this section for the Plaintiff himself to have occupied the said premises on 1st January 1980 as the

owner. Therefore it is abundantly clear that the plaintiff is not estopped from having recourse to the exceptions as laid down in section 2(4)(c) of the Amendment to the Rent Act No 55 of 1980.

The facts in the case referred to by the Hon.Judges of the Civil Appellate High Court is quite distinct to the facts of this case. In the said case Hettiarachchi V.Hettiarachchi [1994] 2 Sri.L.R.188, the Plaintiff who occupied the said premises on 1st January 1980 instituted action against the defendant in the said case for ejectment of the tenant and claimed that the Rent Act (as amended) did not apply to the premises by reason of the provisions section 2(4)(c). In that case it was held that the onus was on the Plaintiff to establish

(1)that the premises were residential premises;

(2)that he (the Plaintiff) was in occupation of the premises on 1st January 1980 and that the premises were let on or after 1st January 1980;

(3)that the Plaintiff was in occupation of the premises on 1st January 1980 in the capacity as the owner.

At the trial it was admitted that the premises were residential premises. It was also not disputed that the premises were let to the defendant after 1st January 1980. The clear finding of the trial Judge was that the Plaintiff was in occupation of the premises on 1st January 1980.However, the learned trial Judge dismissed the Plaintiff's action on the ground that he has failed to prove that his occupation of the premises on 1st January 1980 was in the capacity of the owner. At the trial Plaintiff sought to prove ownership of the premises by producing a deed. The said deed was marked subject to proof and it was common ground that the Plaintiff failed to prove due execution of the deed as required by the provisions of the Evidence Ordinance. In appeal it was held that proof of ownership need not necessarily be only by due proof of title deed. Oral testimony which is not challenged

and extracts from Assessment Registers are sufficient and that the evidence on record is sufficient to establish the fact that the Plaintiff was the owner of the premises for the purpose of section 2(4)(c) of the Rent Act.

In the instant case the plaintiff had clearly proved that the owners were in occupation of the premises on 1st January 1980. The Defendant has not disputed the said fact. What the Plaintiff in this case has to prove is that the said owners were in occupation of the said premises on 1st January 1980. Further the Plaintiff has to prove that the defendant came to occupy the said premises as the tenant on or after 1st January 1980. The learned trial Judge has clearly held that the defendant became the tenant of the original owner M. Gouse after 1st January 1980. In fact the evidence established that the defendant came into occupation of the said premises somewhere in 1982. The learned trial Judge has clearly held that the said premises are residential premises, that the original owner Mr. Gouse was in occupation of the said premises on 1st January 1980 and that the original owner had let the said premises to the defendant after 1st January 1980.

Under section 2(4)(c) what the Plaintiff had to prove was that it is residential premises occupied by the owner on 1st January 1980, and let on or after that date. Any residential premises occupied by the owner on 1st January 1980 and let on or after that date is deemed to be excepted premises under section 2(4)(c). Therefore what the Plaintiff In the instant case had to prove was that the owner of the said premises were occupying the premises on 1st January 1980 and that he had let the said premises to the defendant on or after 1st January 1980. Although Plaintiff had become the owner of the said premises in 1987 he has led sufficient evidence to establish the fact the person who was the owner of the said premises Mr. Gouse occupied the said premises on 1st January 1980.

In my opinion the learned Judges of the Civil Appellate High Court had misdirected themselves in fact and in law, in holding that it was incumbent on the present owner , the Plaintiff in this case to occupy the said premises on 1st January 1980 to maintain and to succeed in this action. Giving such a narrow interpretation to this section would make this amendment meaningless and would defeat the very purpose for which this amendment was brought in by the legislature.

Therefore I answer the three questions of law raised in this case in the affirmative in favour of the Plaintiff. Accordingly the appeal of the Plaintiff-Respondent-Petitioner-Appellant is allowed. I set aside the judgment of the Civil Appellate High Court dated 27.02.2013 and affirm the judgment of the learned District Judge of Mt.Lavinia dated 13.12.2007. I make no order for costs.

JUDGE OF THE SUPREME COURT

S.E.WANASUNDERA, PC,J.

I agree.

JUDGE OF THE SUPREME COURT

PRASANNA.S.JAYAWARDENA, PC,J.

I agree.

JUDGE OF THE SUPREME COURT

