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

In the matter of an Appeal from the Judgment dated 27-05-2016 of the Court of Appeal in C.A. 986/98 (F) in terms of Article 128 of The Constitution.

S.C. Appeal No: 82/2017

S.C. (Spl.L.A.) Application No: 114/2016

Appeal No: C.A. 986/98 (F)

District Court of Gampaha

Case No: 33206/L

Mohamed Sufian Mohamed Faumi,

No. 249, Thihariya, Kalagedihena.

PLAINTIFF

Vs.

P.A. Cyril Perera,

Perera Bakery,

Thihariya, Kalagedihena.

DEFENDANT

AND

Mohamed Sufian Mohamed Faumi,

No. 249, Thihariya, Kalagedihena.

PLAINTIFF-APPELLANT

Vs.

P.A. Cyril Perera, (Deceased)

Perera Bakery,

Thihariya, Kalagedihena.

DEFENDANT-RESPONDENT

1. P.A. Sunila Kanthi Perera
2. P.A. Shriyani Mallika Perera
3. P.A. Kumuduni Champika Perera
4. P.A. Sunil Renuka Perera

All of Perera Bakery, Thihariya,

Kalagedihena.

SUBSTITUTED DEFENDANT-RESPONDENTS

AND NOW BETWEEN

Mohamed Sufian Mohamed

Faumi,

No. 249, Thihariya, Kalagedihena.

PLAINTIFF-APPELLANT-APPELLANT

Vs.

1. P.A. Sunila Kanthi Perera
2. P.A. Shriyani Mallika Perera
3. P.A. Kumuduni Champika Perera
4. P.A. Sunil Renuka Perera

All of Perera Bakery, Thihariya, Kalagedihena.

SUBSTITUTED DEFENDANT-RESPONDENT-RESPONDENTS

Before	: P. Padman Surasena, J.
	: Menaka Wijesundera, J.
	: Sampath B. Abayakoon, J.
Counsel	: H. Withanachchi for the Plaintiff-Appellant-Appellant.
	: Sumith Senanayake, P.C. with Nisali Minoma Balachandra instructed by Damitha Wickrama Arachchi for the Substituted Defendant-Respondent-Respondent.
Argued on	: 30-01-2025
Written Submissions	: 20-02-2025, 05-06-2017 (By the Plaintiff-Appellant-Appellant)
Decided on	: 21-03-2025

Sampath B. Abayakoon, J.

The plaintiff-appellant-appellant (hereinafter referred to as the appellant) preferred this appeal on the basis of being dissatisfied of the judgment dated 27-05-2016 pronounced by the Court of Appeal, wherein, the appeal preferred by him challenging the judgment pronounced by the District Court of Gampaha in Case No. 33206/L was dismissed.

When this matter was supported for Leave to Appeal, this Court granted leave on 03-04-2017, based on the following questions of law.

1. Did the Court of Appeal err in law by taking the view that a tenant can never contract out of the protection afforded by the Rent Act on the basis of the judgment in **Hussain Vs. Jiffry (2002) 1 Sri L R page 185**, in which the tenant had resumed payments to the landlord.
2. Has the Court of Appeal erred in law by its failure to consider that the plaintiff had forgone the rent in respect of the building at issue and that the defendant could retain the tenancy in respect of the other buildings in terms of settlements reached by the parties in determination of the issue whether a tenant can contract outside the Rent Act.
3. Was the Court of Appeal in error by not taking cognisance that the defendant was not prohibited from renouncing his tenancy in terms of the provisions of the Rent Act.
4. Did the both Courts err in law by not appreciating that the contract of tenancy between the parties had come to an end upon the entry of the settlement by which the primary obligation of the tenant to pay rent was dispensed with.
5. Have both the Courts erred in law by appreciating that, in view of the cessation of the payment of rent by mutual consent with the undertaking to deliver the possession to the landlord on a fixed date, has brought about the termination of tenancy and created a contract of license.

This is a matter where the appellant has filed an action against the now deceased-defendant of the District Court action, seeking for a declaration of title to the land morefully described in the schedule of the plaint and also for an order to evict the original defendant and anyone who claims under him from the land mentioned in the schedule.

Although, the action has been instituted in the form of an action for declaration of title and ejectment, there had been no dispute at the trial that in fact, the appellant was the landlord of the original defendant, and the defendant, being the tenant, had the protection of the provisions of the Rent Act No. 07 of 1972. There has also been no dispute that the original defendant has made an application to the Rent Board of Veyangoda on the basis that his landlord refuses to accept rent from him, and therefore, for suitable orders in that regard.

Though the original defendant has filed the earlier mentioned application against the father of the appellant, when the matter was taken up before the Rent Board, the original defendant has agreed to accept the appellant as his landlord.

When the Rent Board application was taken up for hearing on 26-09-1989, the original defendant being the applicant of that application has entered into a settlement with the appellant whom he has recognized as his landlord. The said settlement reflects in the document marked P-03 and also produced as V-02 by the parties during the District Court trial.

In the settlement, which has been recorded before the members of the Rent Board and signed by all the relevant parties, the original defendant has agreed to renounce his tenancy in relation to the building where a bakery is situated, in the land as shown in the schedule of the plaint.

He has also agreed to handover the possession of the same, on or before 30-04-1990, and to remove all the goods belonging to him by that date. It has also been agreed by the appellant as the landlord, to allow the tenant to use the toilet situated in the land or else, to put up a new toilet near the shop owned by the tenant at his expense. It has been agreed further that the

landlord will not charge any rent until the date agreed by the tenant to vacate the premises.

The action instituted before the District Court bears testimony that the original defendant has failed to abide by the settlement and has continued to occupy the building, which is the subject matter of this action. This has resulted in the appellant seeking relief from the District Court as mentioned earlier.

At the trial, the original defendant has taken up the position that since the appellant did not honour his promise to put up a separate toilet for him and also, since he did not wish to renounce his tenancy, he continued to occupy the subject matter.

The learned District Judge of Gampaha, of his judgment dated 29-07-1998, has determined that under the applicable provisions of the Rent Act No. 07 of 1972, the agreement entered between the parties for the tenant to vacate the premises cannot be enforced as a valid agreement since the alleged agreement has been contracted outside the provisions of the Rent Act.

Accordingly, it has been determined that the original defendant is entitled to claim the protection of the Rent Act. Accordingly, the action instituted by the appellant has been dismissed on that basis.

When this judgment was appealed against to the Court of Appeal, the Court of Appeal also held the same view. Having considered several decided cases of our Superior Courts, it has been determined that the original defendant, being the lawful tenant of the premises subjected to this action, cannot be ejected on the basis of an agreement reached between the parties, since the tenant has decided to not relinquish the protection afforded to him under the provisions of the Rent Act. It has also been determined that the parties cannot contract outside of the Rent Act, when the premises is governed by the provisions of the Rent Act.

At the hearing of this appeal, it was agreed by both learned Counsel that although several questions of law have been laid down to be determined, all those questions revolve around whether the original defendant, being a tenant

who had the protection of the Rent Act, can enter into an agreement in the manner relied on by the appellant, and later refuse to abide by it, and claim the same tenancy rights he enjoyed before entering into the said agreement.

It was the view of the learned Counsel who represented the appellant that although the provisions of the Rent Act of 1972 have given strict protection to a tenant who comes within the purview of the Act, in view of the Rent (Amendment) Act No. 55 of 1980, where the legislature by its wisdom has thought it fit to give a more liberal interpretation to the provisions of the Act, an agreement entered in the nature of the agreement relied on by the appellant to file an action against his tenant should be given the same liberal interpretation and should give effect in order to give redress to a landlord.

He relied mainly on the Supreme Court judgment in **Appuhamy Vs. Seneviratne (1982) 2 SLR 601** to support his view.

However, the learned Counsel also admitted that the same view has not been followed in the later judgments of the Supreme Court.

I find that for a landlord to eject a tenant where the standard rent does not exceed Rs. 100/- as in this case, the procedure can only be in terms of section 22 of the Rent Act, where it clearly stipulates that notwithstanding anything in any other law, no action or proceeding for the ejectment of the tenant of any premises where the standard rent (determined under the section) of which for a month does not exceed Rs.100/- shall be instituted or entertained by any Court on the grounds other than stated therein.

It clearly appears that it is the very basis that their lordships of the Court of Appeal upheld the judgment of the District Court.

The evidence led in this case clearly establishes the fact that the original defendant, being the tenant who had the protection of the Rent Act, has gone before the Rent Board because his landlord has refused to accept rent from him.

It has also not been disputed that the tenant has deposited the rent at the relevant local government office as allowed by the Rent Act after he decided to not abide by the agreement reached to vacate the premises.

The case of **A.M.M. Ebrahim Saibo Vs. S.D.M. Mansoor 54 NLR 217** was an appeal where the judgment was pronounced by a Five-Judge Bench of the Supreme Court. Although this was a determination made under the terms of the Rent Restriction Act No. 29 of 1948, I find the determination made at page 224 as to the manner in which the statutory protection guaranteed to a tenant who falls under the provisions of the Act can come to an end, still valid in terms of Rent Act No. 07 of 1972 as well, which is the presently applicable law in that regard.

It was stated,

> *"A tenant can never contract out of the protection afforded. It follows from this that he can in any moment recall a promise to surrender possession. The only two ways in which the statutory protection comes to an end are: –*
>
> 1. *By the handing back of the premises to the landlord.*
> 2. *By the order of a competent Court that is to say a Court acting with jurisdiction."*

It is the considered view of this Court that since the tenant has refused to voluntarily handover the premises to the landlord, the only manner under which he can be ejected from the premises would be under the provisions of section 22 of the Rent Act, and not by coming before the District Court on the basis of an agreement reached by the parties, where the tenant has agreed to vacate, but refused to do so.

The case of **Jayasinghe Vs. Arumugam (1992) 1 SLR 350** was a case determined by the Supreme Court on similar facts where the tenant, after giving a letter to the landlord stating that he will vacate the premises, failed to do so. Having considered whether it amounts to a termination of the tenancy in terms of the Rent Act,

It was **held: -**

> *"As the issue was whether in terms of the Rent Act No. 07 of 1972, a letter given by the tenant that he would vacate the premises, the Roman Dutch law would be irrelevant, section 22 does not set out as a ground for ejectment the giving of a notice to quit by the tenant to his landlord. Hence, the letter given by the tenant will not terminate the tenancy in terms of the Act."*

In the case of **Hussain Vs. Jiffry (2002) 1 SLR 185**, the matters considered by Their lordships of the Supreme Court were similar to the above cited judgment. The appellant was the landlord and the respondent was his tenant, who had the protection of the provisions of the Rent Act. The respondent informed the landlord in writing that he will be relinquishing his tenancy, but later wrote another letter to the landlord informing that he will continue to be his tenant. It has been established at the trial that the tenant has not handed over the premises to the landlord.

Held:

1. *"In the circumstances, there was no termination of the tenancy and the rule that a tenant cannot contract out of the protection afforded by the Rent Act apply."*

The decision relied on by the learned Counsel for the appellant, namely **Appuhamy Vs. Seneviratne (Supra)**, was a case where the landlord sought a judgment to evict his tenant on the basis of arrears of rent and reasonable requirement, which are grounds that can be urged in order to eject a tenant from a house subject to the provisions of the Rent Act in terms of section 22 of the Act. The action has been initiated after serving the required notice on the Commissioner of National Housing.

At the trial, the parties have come to a settlement where the tenant has agreed to vacate the premises upon the terms and conditions agreed by the parties. The learned District Judge has recorded the settlement and had entered the decree, which in my view is a valid judgment entered by a competent Court.

The tenant, after agreeing to the settlement before the District Court, filed an appeal before the Court of Appeal not to challenge the settlement *per se*, but on the basis that the learned District Judge had no jurisdiction to enter the settlement without the Commissioner of National Housing providing him with alternative accommodation.

I am of the view that it was in that context the Supreme Court has determined the matter, holding that in such a scenario, it was open to the tenant to waive the requirement and to agree to vacate the premises even before the Commissioner was able to provide him with alternative accommodation, which in my view is very much different to the facts of the matter under appeal.

I am of the view that the learned District Judge as well as their lordships of the Court of Appeal have come to correct findings in that regard which need no disturbance from this Court.

For the reasons as considered above, I find no merit in the appeal, and answer the questions of law raised in the negative.

Accordingly, I affirm the Judgment of the District Judge of Gampaha pronounced on 29-07-1998 as well as the judgment pronounced by the Court of Appeal on 27-05-2016.

The appeal is dismissed. The parties will bear their own costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court