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

In the matter of an Appeal against Judgment of the Court of Appeal dated 24/07/2015 delivered in C.A. Appeal No: 103/99 (F); D.C. Anuradhapura Case No: 15066/M.

S.C. Appeal No: 162/2017

SC/SPL/LA No: 163/15

C.A. Appeal No: 103/99 (F)

D.C. Anuradhapura Case No: 15066/M

Sunil Rathnayake,

of Thalakola Wewa,

Mahawa.

PLAINTIFF

Vs.

K.H.G. Sirisena,

of "Wasana Jewellers",

No. 233, Anuradhapura Road,

Thambuththegama.

DEFENDANT

AND BETWEEN

Sunil Rathnayake,

of Thalakola Wewa,

Mahawa.

PLAINTIFF-APPELLANT

Vs.

K.H.G. Sirisena,

of "Wasana Jewellers",

No. 233, Anuradhapura Road,

Thambuththegama.

DEFENDANT-RESPONDENT

AND NOW BETWEEN

K.H.G. Sirisena (More correctly

as K.M.G. Sirisena),

of "Wasana Jewellers",

No. 233, Anuradhapura Road,

Thambuththegama.

DEFENDANT-RESPONDENT-

APPELLANT

Sunil Rathnayake,

of Thalakola Wewa,

Mahawa.

PLAINTIFF-APPELLANT-

RESPONDENT

Before	: Mahinda Samayawardhena, J.
	: K. Priyantha Fernando, J.
	: Sampath B. Abayakoon, J.
Counsel	: Dr. Sunil F.A. Coorey instructed by Sudarshani Coorey for the Defendant-Respondent-Appellant.
	: M. P. Ganeshwarn for the Plaintiff-Appellant-Respondent.
Argued on	: 03-09-2025
Written Submissions	: 15-03-2018 (By the Defendant-Respondent-Appellant)
	: 30-09-2025 (By the Plaintiff-Appellant-Respondent)
Decided on	: 13-02-2026

Sampath B. Abayakoon, J.

The defendant-respondent-appellant (hereinafter referred to as the defendant) preferred this appeal on being aggrieved by the judgment dated 24-07-2015 pronounced by the Court of Appeal.

From the impugned judgment, the judgment pronounced in favour of him on 28-12-1998 by the District Court of Anuradhapura in DC Anuradhapura Case No.

15066/M was set aside and a judgment was entered in favour of the plaintiff of the said action.

When this matter was considered for the granting of special leave to appeal on 08-08-2017, leave to appeal was granted in terms of sub-paragraphs (i) and (iii) of paragraph 17 of the petition dated 31-08-2015. At the same time, the learned Counsel for the plaintiff-appellant-respondent (hereinafter referred to as the plaintiff) was also allowed to frame a question of law for the consideration of the Court.

The said questions of law read as follows:

1. Did the Court of Appeal err in holding that the permit dated 29-02-1988 marked as P-5 is a valid document as it had not been cancelled by Mahaweli Authority?
2. Did the Court of Appeal err in failing to appreciate that the said permit dated 29-02-1988 has already been cancelled as it had not been renewed?
3. Did the Court of Appeal err in law by deciding that the respondent is entitled to more interest than the principal amount lent to him since it will be against the common law and the provisions of the Money Lending Ordinance?

At the hearing of this appeal, this Court heard the submissions of the learned Counsel for the defendant and that of the learned Counsel for the plaintiff. This Court also allowed both parties to tender further written submissions, if any, for the consideration of the Court.

The facts relating to the impugned judgment can be summarized in the following manner.

The plaintiff has instituted an action before the District Court of Anuradhapura in the form of a leave and license suit praying for a declaration of title for the land morefully described in the schedule of the plaint and also for the ejectment

of the defendant from the land and the building standing thereon, and for other incidental reliefs.

The plaintiff has based his action on a permit issued to him on 29-02-1988 by the Sri Lanka Mahaweli Authority with regard to the state land mentioned in the schedule of the plaint. Claiming that the said permit is valid, he has maintained the position that he obtained several loans from the defendant, and as security to the said loans, handed over the possession of the land mentioned and several other items as stated in his plaint on the promise that once he settles the loan, the same should be handed back to him.

It has been his position that when he attempted to settle the loan and retake the possession of the land and the building morefully described in the schedule of the plaint, the defendant refused to do so. Although the plaintiff has informed the defendant through his lawyer to vacate the premises, the defendant has refused and continued his possession. It was on that basis, the plaintiff has prayed for the reliefs as stated.

The defendant in his answer, while denying the position of the plaintiff, has claimed that he possessed the land mentioned in the plaint from 01-10-1984 with the permission of the Sri Lanka Mahaweli Authority until he was given a long-term lease to the property, and it is he who built the building which he is occupying. He has denied the plaintiff's contention that it was he who handed over the possession of the land to him. However, in paragraph 4 of his answer, he has stated that the plaintiff constructed a building on the land and carried out a business under the name of R.M.S. Cafe until 08-05-1986.

He has claimed that after obtaining a loan of Rs. 350,000/- from a person called R.M. Sumanawathi, the plaintiff had handed over the building to her as a security to the loan, and it was he who settled the said loan to Sumanawathi at the request of the plaintiff. The defendant has claimed that after paying Rs. 650,000/- to the plaintiff he came into the occupation of the building and continued with the restaurant business that was already functioning.

It has been his position that the plaintiff demanded another Rs. 100,000/- from him somewhere around June 1987 and agreed to inform the Mahaweli Authority to hand over the long-term lease he is expecting from the Authority in the name of the defendant, and they entered into an agreement as well in that regard.

He has further averred that there was an inquiry regarding the issuing of a long-term lease in the name of him by the Sri Lanka Mahaweli Authority on 09-04-1994, and the plaintiff was asked to establish his possession within three months from that date, and it was informed that his failure would lead to the issuance of a permit in the name of the defendant. The defendant has further averred as to the improvements he effected to the building and the costs involved, and has claimed Rs. 750,000/- together with interest if the action is decided in favour of the plaintiff.

After the conclusion of the trial in that regard, the learned District Judge of Anuradhapura, of his judgment dated 22-12-1998 has decided to dismiss the plaintiff's action for the reasons set out in the judgment.

It appears that the learned District Judge has considered the validity of the permit which has been marked as P-5 at the trial, whether the permit is still valid, and whether the plaintiff can maintain the action based on such a permit. The learned District Judge, after having determined that the said permit is an annual permit issued to the plaintiff, has extensively considered whether the plaintiff has a case as stated by him in order to eject the defendant based on the said permit. It has been observed that the plaintiff has previously obtained a permit that has been marked as V-5 by the defendant, which was a permit issued on 10-01-1984. Considering the reasons as to why the plaintiff obtained two permits, it has been determined that, in fact, the plaintiff has disowned the land he secured through his first permit and had later obtained the second permit.

The learned District Judge has also disbelieved the plaintiff's claim that the second permit issued to him was valid when he initiated an action before the District Court. It has been determined that by the time the plaintiff obtained the

second permit, which is the permit relied on by him in this action (P-5), it was the defendant who was in possession of the land. It has been determined further that since the plaintiff disowned the land he received on the permit marked V-5, he had no basis to obtain another permit in the year 1988. It has been the view of the learned District Judge that the plaintiff has obtained the second permit by misrepresentation of facts to the Mahaweli Authority. On the said basis, the action of the plaintiff has been dismissed while deciding that the issue raised by the defendant as to the compensation would not arise since the action of the plaintiff stands dismissed.

After hearing the appeal preferred by the plaintiff, the Court of Appeal has concluded that the learned District Judge had no basis to consider whether the permit issued to the plaintiff should be accepted or not on the ground that he has violated the conditions of the permit issued to him by transferring the possession of the land to a third party.

It has also been held that the agreement between the parties to request the Mahaweli Authority to issue a permit in the name of the defendant was not a matter enforceable by law and it was up to the Mahaweli Authority to decide the validity of the permit and to act accordingly. On the said basis, the Court of Appeal has held that the learned District Judge was wrong as to the relevant law when it was decided that the permit relied on by the plaintiff to initiate the action before the District Court was invalid. Accordingly, it has been held that the plaintiff has proved his case, and he is entitled to relief prayed under prayer (ii) of the plaint. It has also been held that the respondent is also entitled to the reliefs as prayed for in prayer (b) of his answer, which means that a sum of Rs. 750,000/- with interest at 30% from 04-06-1987.

With the above factual matrix in mind, I will now proceed to consider the questions of law under which special leave to appeal was granted by this Court.

As determined by both the learned District Judge as well as the Court of Appeal, the plaintiff has based his case entirely on the annual permit issued in his favour

by the Sri Lanka Mahaweli Authority under the provisions of the State Lands Ordinance No. 08 of 1947.

Therefore, it becomes necessary to determine whether the learned District Judge was correct in deciding not to accept the said permit as a valid basis for the plaintiff's action for the reasons as set out in the judgment, and if not, whether it is the judgment of the Court of Appeal that should stand.

The averments of the plaint clearly suggest that this is a case where the plaintiff contends that the land and the building he had in his possession were handed over to the defendant with his leave and license on the condition that he should handover it back when the plaintiff is ready to repay the loan amount obtained from the defendant.

The evidence adduced before the trial Court by the plaintiff has been on that basis. The defendant has not denied that it was the plaintiff who has the permit for the questioned land, and it was he who constructed the building standing on the land. However, he has relied on a permit issued to the same land in 1984 in favour of the plaintiff (V-5) and has claimed that after getting the possession of the land, it is he who improved it to the present status.

Although the learned District Judge has determined that there was no evidence before the Court to accept the permit relied on by the plaintiff as a valid permit, I find that the said determination has been reached on a wrong premise. The permit P-5 has been an annual permit issued to the plaintiff and the documents marked P-6, P-7, P-8 and P-9 show that the said annual permit has been renewed by the relevant Authority, having accepted the rental.

Therefore, it is clear that on the face of P-5 and the relevant receipts, at the time of filing the action before the District Court on 23-06-1994, the plaintiff has actually had a valid permit for the land in his name.

I find that the learned District Judge has gone on a voyage of discovery in relation to the previous permit (V-5) issued in favour of the plaintiff in order to determine the validity of the permit marked P-5.

It is settled law that an action has to be determined as to the rights between the parties that existed at the time of institution of proceedings before the District Court.

It was observed in **S.C. Appeal No. 138/2009** decided on 07-08-2025:

> **Per A. L. Shiran Gooneratne J.,**
>
> *"It must also be observed that the action instituted by the Plaintiff is one in rei vindicatio. This Deed of Revocation was executed nearly nine years after the institution of the proceedings. This raises a question as to what then becomes of the rights of the parties as they stood at the commencement of the action? While the deed may be admitted in law, to what extent can it affect rights that were already in dispute at the time of filing the action…*
>
> *The general principle of civil procedure is that the rights of the parties must be determined as at the date of institution of the action."*

The evidence adduced before the trial Court clearly provides that due to a monetary transaction, the plaintiff has handed over the possession of the land and the building standing thereon to the defendant as security for the said transaction. As determined correctly by the learned Judge of the Court of Appeal, whether the plaintiff is permitted under the conditions of the permit issued to him to handover the possession of the land to someone else, and because of that, the permit should stand invalid is a matter for the Sri Lanka Mahaweli Authority who issued the permit to decide and take appropriate action, and not for the District Court, since the action was not an action instituted in order to determine the validity of the permit and to eject the plaintiff from the land.

It is also settled law that a person who entered into possession of a land as a licensee cannot challenge the ownership or the right of the party who allowed

him to possess the land in a subsequent action instituted on the basis of leave and license.

It was held in **Ruberu and Another Vs. Wijesooriya (1998) 1 SLR 58 at 60;**

> "*It is an inflexible rule of law that no lessee or licensee will ever be permitted either to question the title of the person who gave him the lease or the license or the permission to occupy or possess the land or to set up want of title in that person, i.e. of the person who gave the license or the lease. That being so, it is superfluous, in this action, framed as it is on the basis that the defendant-respondent is a licensee, to seek a declaration of title.*"

It was held in **S.C. Appeal 171/2019** decided on 22-05-2023 that:

> "*A defendant who enters into a land in a subordinate character such as a tenant, lessee or licensee of the plaintiff is estopped from disputing the title of the plaintiff to the land.*"

In this context, the provisions of section 116 of the Evidence Ordinance should also be considered relevant. The said section reads thus;

> **116. No tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property ; and**
>
> **no person who came upon any immovable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given. (emphasis added)**

The evidence clearly provides that when the plaintiff wanted the land back, the defendant has refused on the basis that he is the one who is in possession of the land, and it is he who is entitled to a long-term lease of the land by the Sri Lanka Mahaweli Authority.

However, it is my view that for him to take such a stand, he must first handover the possession of the land to the person who allowed him to possess the land with his leave and license, and to pursue his rights thereafter.

In **SC/APPEAL/171/2019 (supra)**, it was observed:

> *"According to the Roman Dutch Law principles, a defendant who enters into a land in a subordinate character such as a lessee, licensee, tenant, mortgagee etc. cannot claim title to the land; if he wants to do so,* ***he must first quit the land and then fight for his rights****."*

It was held in **Ruberu and Another Vs. Wijesooriya (supra)** that:

> *"The effect of the operation of section 116 of the Evidence Ordinance is that* ***if a licensee desires to challenge the title under which he is in occupation he must, first, quit the land****. The fact that the licensee or the lessee obtained possession from the plaintiff-appellant is perforce an admission of the fact that the title resides in the plaintiff. No question of title can possibly arise on the pleadings in this case, because, as the defendant-respondent has stated in his answer that he is a lessee under the plaintiff-appellant, he is estopped from denying the title of the plaintiff-appellant."*

In the case of **Mary Beatrice and Others Vs. Seneviratne (1991) 1 Sri.L.R. 97**,

> **Per Senanayake, J**.
>
> *It is opportune at this moment to quote Maasdorf, Institutes of Cape Law 4th Edition Volume 3 page 248 "A lessee as already stated is not entitled to dispute his landlord's title and consequently he cannot refuse to give up possession of the property at the termination of his lease on the ground that he is himself the rightful owner of the same. His duty in such a case is first to restore the property to the lessor and then to litigate with him as to the ownership."*

It clearly appears from the judgment of the Court of Appeal that it was on that footing, the District Court judgment has been set aside, and reliefs have been granted to the plaintiff as stated.

However, the Court of Appeal had been very much mindful that after obtaining the possession of the building, the defendant has carried out improvements to it and the fact that he is entitled to receive compensation for the said improvements. It is the very reason why the Court had ordered that the defendant is entitled to receive compensation as prayed for in his answer where he has claimed Rs. 750,000/- and 30% interest from 04-06-1987 until the said amount is paid.

Although I am in agreement with the amount of compensation ordered by the Court of Appeal having considered the relevant facts and the circumstances, I am not in agreement with the award of 30% interest as prayed for in the defendant's answer.

It is clear from the evidence placed before the Court that when the plaintiff obtained money from the defendant, the property along with several other items had been handed over to him as security, and admittedly, the defendant has carried on with the restaurant business the plaintiff had started in the building. Therefore, it is clear that the defendant has enjoyed the profits of the restaurant business in lieu of the interest that needed to be paid by the plaintiff to him. Hence, I find no reason for him to be allowed interest at 30% in addition to the compensation ordered by the Court of Appeal. I hold that the defendant is only entitled to receive compensation of Rs. 750,000/- for the improvements he made to the land and the building. I order that the plaintiff can take out writ to evict the defendant only after depositing the said full amount of Rs. 750,000/- in favour of the defendant in the District Court action. Accordingly, the judgment of the Court of Appeal is affirmed subject to the earlier mentioned variation.

For the reasons considered as above, I answer the 1st and the 2nd question of law in the negative.

I answer the 3rd question of law formulated on behalf of the plaintiff in the affirmative subjected to the variations earlier mentioned as to the amount of compensation and its payment.

There will be no costs of this appeal.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court