

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

In the matter of an Appeal from the Judgment of the High Court (Civil Appellate) of the Central Province holden in Kandy in terms of Article 127, 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5 (c) of the High Court of the Provinces (Special Provisions) Amendment Act No.54 of 2006.

Merin Dinusha Aberathna,  
No.434, Kandy Road,  
Kadawatha.

**Plaintiff**

**S.C.Appeal No.177/2023**

**SC/HCCA/LA Application**

**No. 392/2022**

**H.C. Civil Appeal (Gampaha No. Vs.**

**WP/ HCCA/ GAM/ 108/2019(F)**

**D.C. Gampaha, Case No. 1584/L**

Henarath Mohottige Janaka  
Chaminda Perera,  
No.114/1, Ihala Biyanwila,  
Kandy Road, Kadawatha.

**Defendant**

**AND BETWEEN**

Merin Dinusha Aberathna,  
No.434, Kandy Road,  
Kadawatha.

**Plaintiff-Appellant**

**Vs.**

Henarath Mohottige Janaka  
Chaminda Perera,  
No.114/1, Ihala Biyanwila,  
Kandy Road, Kadawatha.

**Defendant- Respondent**

**AND NOW BETWEEN**

Henarath Mohottige Janaka  
Chaminda Perera,  
No.114/1, Ihala Biyanwila,  
Kandy Road, Kadawatha.

**Defendant – Respondent-Appellant**

**Vs.**

Merin Dinusha Aberathna,  
No.434, Kandy Road,  
Kadawatha.

**Plaintiff-Appellant-Respondent**

**BEFORE** : S. THURAIRAJA, PC, J.  
K. K. WICKREMASINGHE, J.  
ACHALA WENGAPPULI, J.

**COUNSEL** : Rohan Sahabandu P.C. with Ms. Chathurika  
Elvitiagala and Ms. S. Senanayake for  
the Defendant-Respondent-Appellant  
Kapila Liyanagamage for the Plaintiff-Appellant-  
Respondent.

**ARGUED ON** : 01<sup>st</sup> July, 2024

**DECIDED ON** : 12<sup>th</sup> March, 2026

**ACHALA WENGAPPULI, J.**

The Plaintiff instituted the instant action before the District Court of *Gampaha* seeking for a declaration of title to the premises described in the schedule to the Plaint and for the eviction of the Defendant, who occupies the premises without paying any rent despite the issuance of notice to quit and damages. The Plaintiff also averred in her Plaint that the premises in suit is not covered by the provisions of the Rent Act No. 7 of 1972.

In his amended answer, the Defendant contested those claims and averred that the premises in suit is covered by the provisions of the said Act and, since a valid contract of rent is in operation, he seeks the dismissal of the action of the Plaintiff.

After trial, the District Court dismissed the Plaintiff's action. The Plaintiff preferred an appeal against that judgment. In appeal, the High

Court of Civil Appeal, held with the Plaintiff and granted reliefs as prayed for after allowing her appeal.

The Defendant thereupon sought Leave to Appeal from this Court. When the petition of the Defendant was supported on 21.11.2023, this Court granted Leave to Appeal on the following two questions of law;

- a. Did the learned Civil Appeal High Court Judge err in law when he had concluded that the premises relevant to this case is an excepted premises under the Rent Act?
- b. If the answer to the above question of law is in the negative, is the Plaintiff entitled to succeed with his action?

At the hearing of the Defendant's appeal before this Court, the learned President's Counsel who represented him contended that the High Court of Civil Appeal fallen into error when it held that the business premises in suit, is an excepted premises, in terms of Section 2(4) of the Rent Act. He submitted that the appellate Court has acted on the premise that the first assessment of said business premises was carried out by the *Biyagama Pradesheeya Sabha* in the year 1987, when there was clear evidence presented before the trial Court to show the contrary. Learned President's Counsel also submitted that it was for the Plaintiff to establish that the premises in suit was excepted premises and the High Court of Civil Appeal had erroneously imposed that burden on the Defendant. He relied on the judgment of *Wickramasinghe v Atapattu* (1986) 1 Sri L.R. 16 in support of that submission.

Perusal of the proceedings before the trial Court reveals that, at the very commencement of the trial, the parties have recorded several

admissions. The set of admissions so recorded includes the admissions that relate to the ownership of the premises in suit being with the Plaintiff and that the Defendant operates a business under the title of "*Wipulasiri Cream House*" as a tenant of the Plaintiff for a monthly rent of Rs. 1,000.00.

The instant appeal was argued primarily on the determination of the issue No. 4 of the Plaintiff, which had been raised to the effect whether the premises in suit is covered by the provisions of the Rent Act. The trial Court held that the premises in suit is covered by the provisions of the Rent Act on the basis that the Plaintiff had failed to establish that the business premises was assessed for the first time by the *Biyagama Pradesheeya Sabha* in the year 1987, as the witness called by the Plaintiff, who represented that *Sabha*, said in evidence that there may have been a prior assessment to the one conducted in 1987, although he could not trace any records indicating that such an assessment had been made.

In appeal, the High Court of Civil Appeal held that the trial Court was in error in coming to the conclusion that it was more probable that there would have been a prior assessment, a conclusion which had reached by the original Court in the absence of any such evidence confirming the existence of such an assessment. The appellate Court was of the view that there was no evidence that supported such a conclusion and thereby satisfying the burden of proof to the requisite degree of proof, *i.e.*, on a balance of probability.

The question of fact that must be answered in relation to the first question of law therefore could be identified as to whether the annual assessment of the business premises made by the *Biyagama Pradesheeya*

*Sabha* for the year 1987 was made for the first time, after 1<sup>st</sup> of January 1968, in terms of the Rent Act. If the High Court of Civil Appeal has determined that question of fact correctly in allowing the appeal of the Plaintiff, then the instant appeal by the Defendant must fail.

In relation to assessment of the correctness of the determination made by the appellate Court on the said question of fact, this Court must first consider the evidence presented before the trial Court, to assess the correctness of the said determination of fact, as to when this building became a business premises and whether an assessment made prior to 1987, not as a business premises but as a residential premises. The property on which the building was built on, would not rope in the premises in suit right into scope of the Rent Act.

The evidence of the father of the Plaintiff (*Jerome Abeyratne*) is that he purchased the property, which the business premises relevant to the instant appeal stands, from one of his uncles, *Don Theodore Julian Obeyesekere*, in the year 1987. In the year 2001, he gifted same to his daughter, the Plaintiff. *Abeyratne* admits that at the time he purchased the property in 1987, the Defendant's father was already occupying the building. He acted on the understanding that the tenant would move out whenever he wanted to occupy the building. *Abeyratne* also tendered an extract (P3) obtained from the Assessment Register maintained by the *Biyagama Pradesheeya Sabha*, in relation to the business premises located in *Ihala Biyanwila*, under the assessment No. 1104, *Kandy Road, Kadawatha*, for the period commencing from the year 1987 and ending at the year 2008.

In order to formally prove the document P3, which was marked 'subject to proof', the Plaintiff called a witness from the *Biyagama Pradesheeya Sabha*, who confirmed the authenticity of the said extract. The witness, *Kelum Pathirana*, confirmed that the said business premises is still registered under the ownership of one *Obeyesekere* and had been assessed, for the purpose of assessment tax, at the annual value of Rs. 54,346.00.

During cross-examination, it was suggested by the Defendant to the witness that the business premises under suit was placed under the *Greater Colombo Economic Zone Authority* before the *Biyagama Pradesheeya Sabha* was established. The witness said there had been an assessment made prior to P3, but is unable to state when it was assessed for the first time.

The Defendant, *Chaminda Perera*, stated in his evidence that it was his father who occupied the said business premises, before he succeeded him, as its tenant since the death of his father in 1991. He did not offer any evidence indicating when his father moved into occupy the business premises or when that building was put up by *Obeyesekere*. During cross-examination the Defendant conceded that he has no documentary evidence to produce before Court in support of the position that he succeeded as the tenant of the business premises or that he paid any rent after succeeding his father as the tenant. He admitted that it was *Abeyratne* who funded the concrete structure, after the original building was partly demolished for the purpose of *Kandy-Colombo* Road widening project, but once again failed to mention, when exactly this event had taken place.

The Defendant also called a witness in support of his case. *Priyantha Amaratunga*, who claims that he owns a property situated about 100 meters

away from *Kadawatha* town and personally aware of the business venture undertaken by his friend, the Defendant in the premises in suit. The important part in his evidence in relation to the determination of the question of the first assessment of the business premises is that he paid assessment to *Greater Colombo Economic Commission* before the area was vested in the *Biyagama Pradesheeya Sabha*, with its creation in 1987.

Before dismissing the action of the Plaintiff, the District Court, considered this aspect of making the first assessment as a business premises, and arrived at the conclusion that, in the absence of any evidence of an assessment made prior to 1987, and the Defendant's father was in occupation of the building before that year, the Plaintiff had failed to establish the fact when was the business premises in suit was first assessed. The trial Court therefore did not accept P3 as the first annual assessment of the premises in suit.

In appeal, the High Court of Civil Appeal, interfered with that finding of the District Court on this point on the basis that there was no evidence to indicate there was an assessment prior to P3, and set aside the said conclusion reached by the trial Court as a conclusion reached without any evidence.

Learned President's Counsel, in relation to this aspect of the case, submitted to this Court that it was for the Plaintiff to establish by evidence that the business premises was constructed in 1987 and assessed for the first time in that year, in order to qualify to be excluded from the application of the Rent Act, which he failed and the appellate Court is in error when it interfered with the findings made by the trial Court.

Let me identify the evidence relevant in the determination of this factor and in that light, assess the validity of the impugned conclusion reached by the appellate Court.

The Defendant in his original answer averred that it is his grandfather who first came to occupy the premises in suit and that too in the year 1965. In the amended answer, the Defendant omitted that averment. However, in his evidence of course he named his own father coming into occupation under *Obeysekere*. The Defendant also tendered a certified copy of the pleadings and proceedings of case No. 37373/L in the District Court of *Gampaha* marked V1 to V6, instituted by *Abeyratne* against him, seeking to evict him from the building. *Abeyratne* admitted V1 to V6 are copies of the case he instituted in 1994 seeking to evict the Defendant, but was withdrawn halfway due to his ill health.

Of these documents, V1 refers to the Plaintiff filed by *Abeyratne* in that action, where he averred that his predecessor in title, *Obeysekere*, had acquired title to the premises by Deed No. 1, executed by Notary Public *B.R.S.D. Perera* on 10.04.1982 and it was after execution of Deed No. 6309 by Notary Public *Valentine Dias* on 22.02.1987 that he became its owner.

Thus, there was material before the trial Court that *Obeysekere* held the property only for a period, slightly less than five years. The proceedings of Court in case No. 37373/L containing the examination-in-chief, cross-examination of *Abeyratne* are tendered as V4. Perusal of V4 indicates that *Obeysekere* acquired a larger land called *Nedunagahawatta* alias *Atambagahawatta* by Deed No. 1 of 10.04.1982. The evidence does not

clarify as to when the building (now the premises in suit) was erected by *Obeyesekere*.

The schedule of the Plaint clarifies this aspect. It describes the 16 perch allotment of land on which the premises in suit stands, is a part of a larger land called *Nedunagahawatta* alias *Atambagahawatta*, subdivided according to Plan No. 9696 dated 16.04.1986, drawn by Licensed Surveyor *V.F.F. Perera*. Thus, it is clear that at the time *Abeyratne* purchased the land in 1987, it constituted a larger extent of land including the business premises in suit. The subdivision was done only in the year 1986. This Plan was not produced. But, it then follows that the building *Obeyesekere* put up in that larger land is now caught up within the boundaries of the parcel of land *Abeyratne* had purchased.

In view of these factors, it is reasonable to assume that the business premises was put up on that land by *Obeyesekere* sometime after he became the owner of it, between 1982 and 1987. It is uncontested between the parties that the father of the Defendant came to occupy that premises as the tenant of *Obeyesekere* and not as a tenant of *Abeyratne*.

The witness of the Defendant brought in very important evidence in this regard. The fact that, prior to the entity called *Biyagama Pradeshiya Sabha*, was created in 1987, the *Greater Colombo Economic Commission*, established by the Parliament Act No. 4 of 1978, had the power to collect assessment rates over the properties that are situated within the land area in *Kadawatha*, was elicited through this witness.

Section 22(1) of the *Greater Colombo Economic Commission Act No. 4 of 1978* made provision that the said Commission deemed to be considered as the successor to any local authority, including the ones established under the Village Councils Ordinance (Village Councils Law No. 6 of 1964) and therefore after March 1978, the land on which the premises in suit stood on, came under the purview of the said Commission, by operation of law.

There is no evidence that the *Greater Colombo Economic Commission* made the first assessment of the premises in suit as business premises before its powers in this regard were vested in the *Biyagama Pradesheeya Sabha* in 1987. Since the issue to be determined here is the first assessment of the premises in suit as a business premises and not the assessment of the land on which it was erected, the evidence relating to the time indicating when the building came into existence must be considered as the foremost consideration.

The Defendant's consistent position is that it was his father who rented out the premises from *Obeysekere*, apparently as the first tenant who occupied that premises. Whether he was the first tenant or not, this could take place only during the period *Obeysekere* had the premises under his ownership, as already noted. Therefore, it is reasonable to assume that when *Obeysekere* put up the building after acquiring the tile to the land on which it stood, the construction process he commenced on the land would have reached its completion any time around 1985 or 1986 and became suitable to offer to a tenant as a secure business premises. Up until the building was ready for occupation and the first tenant moved in to set up his business, the premises could not have been assessed by *Greater Colombo*

*Economic Commission* as a business premises and would have assessed as a bare land.

When the building put up by *Obeysekere* was first occupied by the Defendant's father as business premises could be inferred from perusal of evidence contained in V4. In those aborted proceedings and during cross-examination of *Abeyratne*, it was elicited by the Defendant, that it was *Obeysekere* who accepted rent from his father, *Elaris* (who died in 1991), commencing from the year 1989. It is important to note that the Defendant did not suggest *Abeyratne* of any specific date on which the term of tenancy commenced under *Obeysekere*. *Abeyratne* was shown receipts that confirm accepting of rent during the period commencing from 15.09.1990 to 22.09.1993, which he accepts as payments made to *Obeysekere* and thereafter to him. The Defendant did not produce any receipts to indicate that the premises was occupied by his father any time before 1987. Since the Plaintiff admits that *Elaris* was occupying the premises when he purchased the land in 1987, the totality of the evidence seems to suggest that *Elaris* came to occupy the premises around 1986- 1987, and the annual assessment P3 made in 1987, assessing the value exceeding Rs. 1,000.00 of the said premises as a business premises for the first time.

The document P3 indicates that in 1987, when *Biyagama Pradeshiya Sabha* made its annual assessment, there was a radio repair shop housed in the premises in suit which it describes as a building with asbestos roofing. At the commencement of the trial, the parties have admitted the Defendant operates a business under the title "*Wipulasiri Cream House*" from the business premises in suit. Although no evidence was led by the Defendant that his father's business was radio repair work, he nonetheless asserts that

he continued his father's business since 1991. When the Defendant himself admitted that it was *Abeyratne* who funded the laying of the concrete slab on top of the building after it was partly demolished for the purpose of road widening, it is more probable that the building with asbestoses roofing, which was put up by *Obseyesekere* and initially occupied by *Elaris*, was first assessed as a business premises by the *Biyagama Pradesheeya Sabha* in 1987.

The trial Court was troubled when the witness from *Biyagama Pradeshiya Sabha* said there may have been prior assessments. The witness in stating that there would have been prior assessments, did not claim that prior assessment was made as a business premises. But that Court, unfortunately failed to note what it ought to have looked for is whether P3 is the first assessment of the premises in suit as a business premises and not in any other category. The High Court of Civil Appeal, in coming to the conclusion that P3 is the first assessment of the premises as a business premises, also considered the fact that the dispute that erupted between the two parties when the building was partly demolished for the road widening, the Defendant did not complain to Rent Board seeking resolution.

Learned President's Counsel placed heavy reliance on the statement contained in the judgment of the appellate Court, indicating when it concluded that there was no evidence to show that the premises in suit is covered by the provisions of the Rent Act it had imposed the burden of proof wrongly on the Defendant. The said sentence relied on by the learned President's Counsel to convince this Court of his contention that the appellate Court had wrongly imposed a burden on the Defendant,

whereas it was for the Plaintiff to establish that fact, as held by the Court of Appeal in the case of *Wickramasinghe v Atapattu* (*supra*) reads “ ඒ අනුව ගෙවල් කුලී පනතින් ආවරණය වන පරිශ්‍රයක් බවට තහවුරු කෙරෙන කිසිදු සාක්ෂියක් ඉදිරිපත්ව නැත.”.

This quoted statement from the judgment of the High Court of Civil Appeal in itself makes no reference to a party to the action who had failed in that task. If one considers the context in which this statement is made by that Court, it becomes clear that it is an expression of its view, made after considering the evidence presented before the trial Court, in relation to the determination of issue No. 4 of the Plaintiff, which was framed to the effect whether the premises in suit is a premises covered under the provisions of Rent Act. The appellate Court was merely expressing its conclusion that there was no evidence presented before Court to indicate otherwise. That does not mean that it had imposed a burden on the Defendant to prove the negative of that particular issue of the Plaintiff.

The Plaintiff had placed several items of evidence in support of her assertion that the premises in suit is an excepted premises and the appellate Court was making an observation that there was hardly any evidence to hold otherwise. This pronouncement indicates that the Plaintiff established the issue No. 4 in her favour by preponderance of evidence. When there are no evidence to hold otherwise, the appellate Court is well justified interfering with a conclusion reached by the trial Court without sufficient evidence to hold the way it did.

In view of the reasoning contained in the preceding paragraphs of this judgment I proceed to answer the two questions of law on which this appeal was argued as follows;

- a. Did the learned Civil Appeal High Court Judge err in law when he had concluded that the premises relevant to this case is an excepted premises under the Rent Act?

No.

- b. If the answer to the above question of law is in the negative, is the Plaintiff entitled to succeed with his action?

Yes.

Therefore, the judgment of the High Court of Civil Appeal, which had set aside the judgment of the District Court of *Gampaha* in exercising appellate jurisdiction is hereby affirmed. Accordingly, the appeal of the Defendant stands dismissed.

The Plaintiff is entitled to costs of this appeal.

**JUDGE OF THE SUPREME COURT**

**S. THURAIRAJA, PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**K. K. WICKREMASINGHE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**