

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

In the matter of an Appeal in terms of Section 5(C) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006 read with Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka

SC/Appeal/192/2018

SC/HCCA/LA/231/2018

SP/HCCA/RAT/25/2017

[FA]

D.C. Ratnapura/5702/L

Naiyandikarage Vidyananda,
'Vijithapaya', Marapana,
Ratnapura.

PLAINTIFF

Vs.

Samarasinghege Jayasundera Bandara,
No. 4, Church Road (*Palliya Para*),
Ratnapura. [Deceased]

DEFENDANT

1A. Sri Narayana Kapuralalage Kularatne
Menike,

1B. Samarasinghege Jayasundera Pushpika
Bandara,

1C. Samarasinghege Jayasundera Yasantha
Dhanushka Bandara,
All of No. 4, Church Road
(*Palliya Para*), Ratnapura.

SUBSTITUTED DEFENDANTS

AND

1A. Sri Narayana Kapuralalage Kularatne
Menike,

1B. Samarasinghege Jayasundera Pushpika
Bandara,

1C. Samarasinghege Jayasundera Yasantha
Dhanushka Bandara,
All of No. 4, Church Road
(*Palliya Para*), Ratnapura.

SUBSTITUTED DEFENDANTS-APPELLANTS

Vs.

Naiyandikarage Vidyananda,
'Vijithapaya', Marapana,
Ratnapura

PLAINTIFF-RESPONDENT

AND NOW BETWEEN

1A. Sri Narayana Kapuralalage Kularatne
Menike,

1B. Samarasinghege Jayasundera Pushpika
Bandara,

1C. Samarasinghege Jayasundera Yasantha
Dhanushka Bandara,
All of No. 4, Church Road
(*Palliya Para*), Ratnapura.

SUBSTITUTED DEFENDANTS-APPELLANTS-APPELLANTS

Vs.

Naiyandikarage Vidyananda,
'Vijithapaya', Marapana,
Ratnapura.

PLAINTIFF-RESPONDENT-RESPONDENT

Before: Janak De Silva J.

Arjuna Obeyesekere J.

Dr Sobhitha Rajakaruna J.

Counsel: Uditha Egalahewa, PC, with Anuruddha Dharmaratne and Zahara Hassim for the 1A, 1B & 1C Substituted Defendants - Appellants-Appellants

M. C. Jayaratne, PC, with J.M. Dananjaya Jayasundara for the Plaintiff-Respondent-Respondent

Written Submissions: 1A, 1B & 1C Substituted Defendants - Appellants-Appellants: 01 March 2019 & 06 March 2026

Plaintiff-Respondent-Respondent: 07 August 2019

Argued on: 16 January 2026

Decided on: 15 May 2026

Dr Sobhitha Rajakaruna J.

The Plaintiff-Respondent-Respondent ('Plaintiff') filed an action in the District Court of *Rathnapura* against the original Defendant, who was substituted by the 1A, 1B & 1C Substituted Defendants-Appellants-Appellants (hereinafter referred to as the 'Defendant') seeking inter alia, a declaration that he is the possessor of the subject premises (premises at No. 4, Church Road, Rathnapura) together with the business (an Ayurvedic Dispensary) conducted therein. Further, the Plaintiff sought the eviction of the Defendant, his agents, and servants from the said premises.

The original owners of the premises were C. Kuruppu (Mrs.) and Dharmasena Wanasundera. Mrs. C. Kuruppu declared the premises as an "excess house" under the Ceiling on Housing Property Law No. 1 of 1973, whereupon it vested absolutely in the Commissioner of National Housing ('CNH') in terms of Section 15(2) of that Law.

According to the Plaintiff, his late father, Naiyandikarage Agiris, an Ayurvedic Physician, became the contractual tenant of the said premises in 1937 under the original owners.

Agiris died in 1967. Thereafter, Saranelis Kularatne (also referred to as Dr V. N. S. Kularatne), a nephew of Agiris, continued to conduct the Ayurvedic Dispensary business on the premises. Kularatne died without transferring any rights, and the premises remained vested in the CNH during his possession. Following Kularatne's death, the Plaintiff commenced paying rent to the CNH.

The Plaintiff complains that the Defendant, while employed by him in the business, surreptitiously attempted in October 1982 to obtain the premises directly from the CNH. As a result of this misconduct, the Plaintiff terminated the Defendant's services. The Defendant, in turn, contends that the Plaintiff has no right to maintain the action because the premises are vested in the CNH. The Defendant claims that after Kularatne's death, he resided on the premises and continued the Ayurvedic practice with the Plaintiff's consent. He further asserts that he took steps to pay rent from 1978 onwards and maintains that he is the lawful tenant, while the Plaintiff is unlawfully and forcibly attempting to dispossess him.

After the Trial, the District Court delivered judgment on 01 December 2016 in favour of the Plaintiff. The learned District Judge held that, although the premises are vested in the CNH, the Plaintiff was entitled to maintain the action in view of the nature of his claim and the damages caused to him by the Defendant's occupation. Upon an appeal lodged by the Defendants, the Provincial High Court of the Sabaragamuwa Province holden in *Rathnapura* ('High Court'), on 12 June 2018, affirmed the said judgment of the District Court.

There is no dispute that the premises vested in the CNH. The Defendant's preliminary objection is that the Plaintiff has no title or entitlement to the property merely because it is vested in the CNH. Upon examination of the issues framed in the District Court, it is clear that the provisions of the said Ceiling on Housing Property Law need not be directly invoked to resolve the dispute between the parties. The central question is who was in possession of the premises at the time of vesting and who continued in possession until the institution of the Action in the District Court.

I have carefully considered the issues framed by both parties and the evidence, both oral and documentary, led before the learned District Judge in relation to those issues. In my view, the 5th and 7th issues framed on behalf of the Plaintiff are of particular importance.

The High Court correctly observed that the entire matter could be resolved by determining these two issues, which may be translated as follows:

(5)"Was the Defendant employed by the Plaintiff for the purpose of maintaining/running the said Ayurvedic dispensary/pharmacy?"

(7) "Has the Defendant, due to his conduct, become legally bound not to interfere with the Plaintiff's tenancy and his rights regarding the said Ayurvedic dispensary/pharmacy?"

I thoroughly examined overall evidence led in the District Court, along with the related documentary evidence. According to the Plaintiff's evidence, Kularatna, who continuously paid the rent for the premises, maintained the business, and after his demise in 1978, the ownership of the business transferred to the Plaintiff, who is also a professional in the field of Ayurvedic medicine. The evidence shows that the Defendant was employed on 12 February 1978, initially at a daily wage of Rs. 15, later increased to a monthly salary of Rs. 500. This is supported by documents 'P15' and 'P16' (pages 84 and 85 of the record).

The Plaintiff produced account books marked 'P17a' and 'P17b', which establish that the business was originally conducted by his late father, Agiris, and continued by Kularatne after Agiris's death. These documents further prove the payments made to the Defendant. The Plaintiff also tendered documents 'P5' to 'P10' in proof of his connection with the premises. The Defendant, in his evidence-in-chief, admitted that he had served under the Ayurvedic Physician Kularatne since 1973. Documentary evidence further reveals that rent for the premises was regularly paid, first by the Plaintiff's father and later by the late Dr V. N. S. Kularatne. Significantly, the Defendant failed to produce even a single rent receipt, a fact correctly noted by the learned Trial judge.

The High Court rightly held that the Defendant did not enjoy exclusive possession of the business, as he had been using furniture, drugs, racks, and fittings belonging to the Plaintiff's late father, Agiris. This position was expressly admitted by the Defendant in his Police statement dated 15 November 1982, marked as 'P19'. That admission constitutes strong corroborative evidence against the Defendant. Moreover, the statements of accounts ('P17' and 'P17b') corroborate that the Defendant made payments to the Plaintiff in the capacity of a licensee, thereby acknowledging the Plaintiff's rights over the business.

Although the Plaintiff admitted under cross-examination that the Ayurvedic Dispensary was not registered in his name and that he had not paid EPF or ETF contributions for his employees (including the Defendant), and although no documents were produced to prove payment of taxes relating to the property, these admissions do not detract from the overwhelming evidence establishing that the Defendant was an employee of the Plaintiff.

In the circumstances, I find that the Plaintiff has established on a balance of probabilities that a contract of employment existed between the Plaintiff and the Defendant.

In light of the above, the 5th issue has been correctly answered by the District Court in favour of the Plaintiff. The learned District Judge properly analysed the evidence relating to the employment relationship with reference to the relevant issues. The High Court, upon careful consideration, affirmed the findings of the District Court.

For the reasons stated above, I am of the considered opinion that no interference with the impugned judgment is warranted. Thus, I proceed to answer the below Questions of law upon which this Court granted Leave to appeal (on 29 November 2018), in favour of the Plaintiff-Respondent-Respondent;

- a. Have the learned Judges of the High Court erred in law in failing to appreciate and consider that in the light of the fact that the Plaintiff is not the owner, not the tenant and the Plaintiff having no right to the possession of the premises in suit, the Plaintiff cannot get any relief prayed for in the Plaintiff?
- b. Have the learned Judges of the High Court erred in law in failing to appreciate and consider that if issue no. 4 raised at the trial cannot be answered in the affirmative, issue No. 5 too cannot be answered in the affirmative, and therefore, the Plaintiff's action must fail?
- c. Have the learned Judges of the High Court erred in law in failing to appreciate and consider that, in any event, upon the transfer of the title of the premises in suit in favour of the Defendant, all rights to the alleged tenancy of the Plaintiff under the Commissioner of National Housing gets extinguished and therefore the Plaintiff is not entitled to succeed in this action?

- d. Have the learned Judges of the High Court erred in law arriving at the finding that the subsequent acquisition of title by the Defendant is irrelevant for the determination of the right between the parties to this action?
- e. Have the learned Judges of the High Court erred in law in failing to appreciate and consider that the Plaintiff had no locus standi to have and maintain this action?

In the circumstances, I affirm the judgement dated 12 June 2018 of the High Court, as well as the judgment dated 01 December 2016 of the District Court. Accordingly, the Appeal is dismissed without costs.

Judge of the Supreme Court

Janak De Silva J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere J.

I agree.

Judge of the Supreme Court