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

E. Indrani Diyago alias, E. Indrani Wijerathna,
No.2, Samagi Mawatha,
Kurunduwatta, Kanuwana,
Ja-Ela.
Plaintiff
Vs.

S.C. Appeal No.205/2014
SCHCCA LA No. 386/2013
Civil Appeelate High Court No.WP/HCCA/COL 59/2010(F)
DC Colombo Case No. 00001/08

Abdul Latif Ahamed Faumi,
No.12, Dematagoda Place,
Colombo -09.
Defendant

AND

E. Indrani Diyago alias, E. Indrani Wijerathna,
No.2, Samagi Mawatha,
Kurunduwatta, Kanuwana,
Ja-Ela.
Plaintiff-Appellant

Vs.

Abdul Latif Ahamed Faumi,
No.12, Dematagoda Place,
Colombo -09.
Defendant-Respondent

BETWEEN

Abdul Latif Ahamed Faumi,

No.12, Dematagoda Place,
Colombo -09.
Defendant-Respondent-Petitioner

Vs.

Indrani Diyago alias**,** E. Indrani Wijerathna,
No.2, Samagi Mawatha,
Kurunduwatta, Kanuwana,
Ja-Ela.
Plaintif-Appellant-Respondent

AND BETWEEN

(deceased) Abdul Latif Ahamed Faumi,
No.12, Dematagoda Place,
Colombo -09.
Defendant-Respondent-Petitioner-Appellant

Mohamed Fahim,
No.12, Dematagoda Place,
Colombo -09.
Substituted-Defendant-Respondent-Petitioner-Appellant

Vs.

(deceased) **E.**Indrani Diyago alias**,** E. Indrani Wijerathna,
No.2, Samagi Mawatha,
Kurunduwatta, Kanuwana,
Ja-Ela.
Plaintif-Appellant-Respondent-Respondent

Dinal Anthony Channa Diyago,
No.269, Koswatta,
Taalangama North,
Mattegoda.
Substituted-Plaintif-Appellant-Respondent-Respondent

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

COUNSEL : Shantha Karunadhara instructed by Chathurani de Silva for the Substituted-Defendant-Respondent-Appellant
Chathura Galhena with Dharani Weerasinghe instructed by R. M. M. Rathnayake for the Plaintiff-Appellant- Respondent

ARGUED ON : 02nd October, 2024

DECIDED ON : 12th March, 2026

ACHALA WENGAPPULI, J.

The Plaintiff instituted the instant action primarily to evict the Defendant, an overholding lessee. The Defendant, in a cross claim, sought to recover the monies paid to the Plaintiff, over an agreement to purchase the property, and over a verbal agreement to sell. After trial, the District Court dismissed the Plaintiff's action and granted some of the reliefs prayed by the Defendant.

The Plaintiff preferred an appeal to the High Court of Civil Appeal. In delivering the impugned judgment, the appellate Court has set aside the

judgment of the District Court, after granting the reliefs prayed by the Plaintiff. The appellate Court also held that the Defendant is entitle *jus retentionis* and to receive Rs. 582,000.00 from the Plaintiff.

The Defendant sought Leave to Appeal against the judgment of the High Court of Civil Appeal. This Court heard submissions of the parties on 03.11.2014 for and against that application and decided to grant Leave to Appeal on the following two questions of law;

a. Is there evidence before the District Court to grant reliefs as prayed for by the Plaintiff?

b. Since there are no evidence led by the Plaintiff to substantiate the damages of Rs. 5,000.00 per month from 18.12.2000, is the Plaintiff entitled in law to claim damages as prayed for by him?

In instituting action against the Defendant, the Plaintiff averred in her Plaint that she entered into a Deed of Lease No. 314 dated 18.12.1998 with him, in order to lease out the premises descried in the Plaint. The agreed terms included payment of monthly rental of Rs. 5000.00 for a period of one year, which ended on 17.12.1999. She further averred that during this period, the Defendant, by way of an informal agreement between the two of them, consented to purchase the lease premises for a consideration agreed by parties in a sum of Rs. 3,500,000.00. Upon the expiration of the said lease period, the Defendant has entered into another agreement of lease, covering another period of one year, which ended on 18.12.2000.

Of the agreed purchase price of Rs. 3,500,000.00, the Defendant had paid only Rs. 582,000.00. The sale of the premises, in spite of the informal agreement between the parties, did not proceed as planned, primarily due to the Defendant's failure to fulfil his part of the obligations as the three cheques issued by him, from three different banks, for the value of Rs. 518,000.00 to cover part of the balance sum, were returned with the remark "*Refer to Drawer*".

The Plaintiff therefore alleged that the Defendant is an overholding lessee of the leased premises since 18.12.2000 and in illegal occupation without making payment of any rent. The reliefs she prayed from Court are a declaration of her title to the premises, eviction of the Defendant by handing over vacant possession, recovery of unpaid rent from 18.12.2000 in a sum of Rs. 5000.00 a month and to set off the said unpaid rent from Rs. 582,000.00 already paid advance by the Defendant.

The Defendant, in his answer admitted the lease agreement No. 314 and claimed he signed on it on the day he came to possession of the premises, i.e. 27.08.1999, and the Plaintiff accepted the monthly rent of Rs. 5000.00 until 27.12.1999. Thereafter, he became the tenant of the Plaintiff in terms of the Rent Act No. 7 of 1972. He further averred that since December 2000, he paid Rs. 10,000.00 as rent, until March 2007.

The Defendant admits that he entered into an informal agreement with the Plaintiff, with a view to purchase the premises in suit but for a consideration of Rs. 1,300,000.00, who accepted a part payment of Rs. 600,000.00. He alleged that the Plaintiff failed to prepare a condominium plan as agreed and he allowed the three cheques to be returned by the banks. The Defendant then made a cross claim of return the balance from Rs. 895,000.00 which he had already paid to the

Plaintiff after recovering his unpaid rents. The Defendant accordingly moved Court to grant the said relief.

The basis of arriving at the amount Rs. 895,000.00, being the total due to the Defendant, is described by him in the answer as follows;

a. Rs. 145,000.00 - paid as rent for the period covering August 1998[9] to December 2000 (29 months at Rs. 5000.00)
b. Rs. 750,000.00 - paid as rent for the period covering December 2000 to March 2007 (75 months at Rs. 10,000.00)

He also claims Rs. 600,000.00, being part payment of the consideration, together with legal interest thereon. In replication, the Plaintiff totally denied these claims made by the Defendant.

Proceeding to trial on those pleadings, the parties have settled for a total of 17 issues between them, after recording six admissions.

These admissions are to the effect that;

1. Jurisdiction of the Court,
2. The corpus described in the schedule to the Plaint,
3. The Plaintiff is the owner of the premises in suit,
4. Deed of Lease No. 314, the Plaintiff is the Lessor and the Defendant is the Lessee,
5. At present the said lease period has expired.

The proceedings of Court on 06.10.2008 indicate that the issue Nos. 11, 12, 13 and 14 of the Defendant that were framed on the application of the Rent Act and the increased rent were struck off by the District Court as the Defendant contested the Plaintiff's rights over the premises in suit by framing issue Nos. 5, 6

and 7. The trial Court, having noted that the parties have admitted their relationship over the lease agreement and that the Defendant is in occupation of the premises in suit, even after the expiration of the lease agreement, ordered the Defendant to begin his case as it was for him to establish by which right he continued to occupy that premises.

This order made by the trial Court was not challenged by either party and having accepted the same, the Defendant proceeded to present his case. After the Defendant closed his case, the Plaintiff informed Court that she would not give evidence. The trial Court, in proceeding to dismiss the Plaintiff's action, held that in the absence of any oral or documentary evidence and in the absence of an explanation for her failure to offer evidence, it could draw an adverse inference in terms of Section 144 (f) of the Evidence Ordinance against her and to accept the Defendant's case, as being established on balance of probability. The trial Court thereupon granted some of the reliefs prayed for by the Defendant.

When the Plaintiff decided to challenge the dismissal of her action by the District Court with an appeal to the High Court of Civil Appeal by seeking to set aside that decision, she relied on the admissions recorded by which the relationship of the parties is described as the lessor and lessee and that the Defendant who cannot deny the title to the premises in suit and upon expiry of the lease he is liable to surrender its possession because he is an overholding lessee. She further contended that the Defendant failed to present any plausible evidence in support of his position. The appellate Court accepted that contention and allowed her appeal by concluding that the trial Court erred in law and came to a wrong conclusion.

The High Court of Civil Appeal, also rejected the contention of the Defendant that the Plaintiff should have presented evidence in rebuttal and the trial Court was left with no other option to consider the body of evidence presented before it, which consists solely on the evidence presented by the Defendant.

In view of the two questions of law referred to above, this Court need not to consider the entitlement to the reliefs claimed by the Defendant in his answer.

The question of law "*Is there evidence before the District Court to grant reliefs as prayed for by the Plaintiff*" could be answered in the affirmative based upon two considerations.

First, I have earlier on referred to the several admissions recorded by the parties, in this judgment at the very commencement of the trial. Those factual admissions recorded by the parties, based on the respective positions they have taken up on the pleadings, indicate that the parties have accepted the contents of those admissions, as relevant facts in issue that are already proved without adducing formal evidence.

The trial Court, acting on that set of factual admissions, decided to call the Defendant to begin. The Defendant accepted that decision of the trial Court. Explanation 1 of Section 150 of the Civil Procedure Code, in relation to rules as to the right to begin, states "*[T]he plaintiff has the right to begin unless where the defendants admit that facts alleged by the plaintiff, and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the reliefs which he seeks, in which case the defendant has the right to begin.*"

The Defendant had a point of law, which is at variance with the Plaintiff, regarding the applicability of the provisions of the Rent Act to the premises in

suit. He also had "*some additional facts*" when he relied on the failure of the Plaintiff to fulfil the set of obligations which she had undertaken, consequent to the informal agreement they have reached over the sale of the premises in suit for valuable consideration.

The Plaintiff, in support of her claim, invited the trial Court to decide only four issues. The issue Nos. 1 to 4 were raised to the following effect;

1. In view of the admissions whether the Defendant has admitted that the Plaintiff is the owner of the premises in suit by operation of law?
2. Whether the Defendant occupying the leased-out premises after the lease has lapsed as a overholding lessee?
3. Whether the Defendant continuing the occupation of the premises in suit is illegal and unjust?
4. If one or more of these issues are answered in Plaintiff's favour is she not entitled to reliefs prayed for in the Plaint?

It is clear that first three issues could be answered in favour of the Plaintiff by merely acting on the contents of the admissions recorded by Court. Moreover, the trial Court, acted under Section 150 of the Civil Procedure Code ordering the Defendant to begin his case " … *either in point of law or on some additional facts alleged by the defendant*" in support of his position that "… *the plaintiff is not entitled to any part of the reliefs which [s]he seeks*". This decision is in line with the ratio of ***Siyaneris v Udenis de Silva*** (1951) 52 NLR 289.

Second, the question of leading evidence of rebuttal in an instance where the defendant was ordered to begin would " … *rarely to be met with in a civil action, since a party to an action couldn't have led at the trial, any evidence except to support the case enunciated in his pleadings and which his opponent was prepared to*

meet. In other words, as stated in explanation 02 appended to section 150 of the Civil Procedure Code, Evidence must reasonably accord with party's pleadings and no party can set up at trial a case which is materially different from that which he has placed on record" (vide at p. 223 of ***Hildon v Munaweera*** (1997) 3 Sri L.R. 220.

The only point of law, relied on by the Defendant, is that the premises in suit is covered by the provisions of the Rent Act. At the very commencement of the trial, the trial Court struck out the issue Nos. 11 to 14 of the Defendant that relates to the applicability of Rent Act and of increased rent. However, the same trial Judge, who made the said order, erroneously decided those four issues in favour of the Defendant in his judgment, perhaps without realising that they had already been struck out by himself.

The determination of the remaining question of law, namely *"[S]ince there are no evidence led by the Plaintiff to substantiate the damages of Rs. 5,000.00 per month from 18.12.2000, is the Plaintiff entitled in law to claim damages as prayed for by him"* need no detailed consideration.

The Defendant tendered the Deed of Lease No. 314, as an item of documentary evidence marked as V1 during his evidence. This is the document by which he became the lessee of the Plaintiff. The Plaintiff, during cross-examination of the Defendant, also marked the same instrument as an item of documentary evidence, with the marking given "P1". Thus, in fact the Plaintiff had tendered evidence in support of her case, although the trial Court erroneously stated that she did not place any oral or documentary evidence before it on her behalf.

Admission Nos. 5 and 6, which recorded in reference to V1/P1, confirm that the Defendant is in occupation of the premises in suit, even after the term of

lease has lapsed. The Deed of Lease No. 314 covers the period commencing from 18.12.1998 to 17.12.1999. The Defendant also led in evidence Deed of Lease No. 25 marked as V2. He claims he did not sign on this deed. The said lease agreement indicates that there was a lease between the Plaintiff and Defendant up to 18.12.2000.

The trial Court did not act on V2 as the Plaintiff failed to establish its validity, in view of the challenge made by the Defendant. That made the Plaintiff entitled to unpaid rents from the date on which V1/P1 expired, however she claimed that relief only from 18.12.2000, and is therefore entitled to the lesser relief.

In view of the reasoning contained in the preceding paragraphs, I answer the two questions of law on which the instant appeal was heard, in the affirmative.

The judgment of the High Court of Civil Appeal is accordingly affirmed and the appeal of the Defendant is dismissed with costs of this appeal.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA. PC, J.

I agree.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT