

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

In the matter of an application for Special Leave to Appeal in terms of Article 127/128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC/APPEAL/44/2025

The General Consistory of the Christian Reformed Church of Sri Lanka,
of No. 363, Galle Road, Wellawatte,
Colombo 06.

SC/HCCA/LA/16/2022

Plaintiff

Vs.

HC (Civil) Appeal No:

WP/HCCA/MT/65/18 (F)

Mr. Rojer Foo Kwei Hsu of "Chinese Gift Palace",

D. C. Mount Lavinia case no:

992/10/RE

of No. 78, Galle Road, Wellawatte,
Colombo 06.

Defendant

AND NOW

Mr. Rojer Foo Kwei Hsu of "Chinese Gift Palace",
of No. 78, Galle Road, Wellawatte,
Colombo 06.

Defendant - Appellant

Vs.

The General Consistory of the Christian
Reformed Church of Sri Lanka,
of No. 363, Galle Road, Wellawatte,
Colombo 06.

Plaintiff - Respondent

AND NOW BETWEEN

The General Consistory of the Christian
Reformed Church of Sri Lanka,
of No. 363, Galle Road, Wellawatte,
Colombo 06.

Plaintiff - Respondent - Appellant

Vs.

Mr. Rojer Foo Kwei Hsu of "Chinese Gift
Palace",
of No. 78, Galle Road, Wellawatte,
Colombo 6

Defendant - Appellant - Respondent

Before : Janak De Silva, J.
Menaka Wijesundera, J.
M. Sampath K. B. Wijeratne, J.

Counsel : Charles De Silva instructed by Bindiya Senarath for the Plaintiff – Respondent – Appellant.
Ikram Mohammed, PC with S. K. Lankathillake, PC and Reeshman Jiffry instructed by S. B. Dissanayake Associates for the Defendant – Appellant – Respondent.

Written

Submissions : Written submissions on behalf of the Plaintiff – Respondent – Appellant on 21st April, 2025.
Written submissions on behalf of the Defendant – Appellant – Respondent on 09th June, 2025

Argued on : 04.11.2025

Decided on : 06.02.2026

MENAKA WIJESUNDERA J.

The instant appeal has been lodged to set aside the judgement dated 10th of December, 2021 of the Civil Appellate High Court of the Western province.

The Plaintiff-Respondent-Appellant, hereinafter referred to as the “Plaintiff”, states in its plaint that it is a juristic person, duly incorporated under the name, “The General Consistory of the Christian Reformed Church of Sri Lanka”. The plaintiff filed action in the District Court of Mount Lavinia to eject its tenant, the Defendant-Appellant-Respondent, hereinafter referred to as the “Defendant”, from the premises bearing the address No. 78, Galle Road, Wellawatte, Colombo 06.

The plaintiff stated that in the year 2006, the defendant had started to make certain structural alterations to the property without the prior approval of the Appellant and the Municipal Council of Colombo and had completed it on or about the 3rd of September 2008, which according to Section 22(2)(e) of the Rent Act No. 7 of 1972 as amended by the Rent (Amendment) Act No. 26 of 2002, is grounds for ejectment.

The plaintiff further states that on the 20th of February 2010, notice to quit and deliver peaceful vacant possession of the premises to the plaintiff before the 31st of March 2010 was posted by the plaintiff's lawyer via registered post. According to the plaintiff, despite sending the notice to quit, the defendant continued to occupy the premises illegally and had only paid the rent up until the 31st of March 2010. Thereinafter, the plaintiff's lawyer had filed action against the defendant in the District Court.

The defendant's position was that he had not received notice to quit and had further stated that the appellant had instituted action prior to this in the year 2007, with regards to the alterations and had subsequently withdrawn the action. The defendant further averred that since the plaintiff had accepted rent once the structural alterations had started, the plaintiff has forfeited his right to institute action against the defendant citing the legal principle of *approbate and reprobate*.

Learned additional District Judge delivered the judgement in favour of the appellant. The defendant, aggrieved by the said judgement had appealed to the Provincial High Court of Civil Appeal of the Western Province, Mount Lavinia.

Learned Judge of the High Court had set aside the judgement of the District Court on the basis that the plaintiff had not in fact provided sufficient evidence to prove that the letter of quit notice was sent to the respondent, prior to instituting proceedings in the District Court.

Aggrieved by the judgement of the Provincial High Court, the plaintiff had filed the instant appeal before this Court. This matter was supported for leave to proceed on the 12th of March, 2025 and this court has granted leave on the following questions of law,

1. The Honourable High Court Judges grossly erred in law and in fact when the Honourable High Court Judges held that the Learned District Judge had not properly evaluated the evidence of the said Attorney-at-Law for the Plaintiff.
2. The Honourable High Court Judges erred in holding that there was no satisfactory evidence for the court to be satisfied that the letter was properly addressed.
3. The Honourable High Court Judges erred in holding that the evidence taken as a whole led on behalf of the Plaintiff shows that no proper service of notice of termination has been affected.

The position of the plaintiff is that the Attorney-at-Law for the plaintiff, Mr. Reshan Chaminda Udduwa Gamage, had posted the letter of quit notice via registered post and had also given evidence to that effect. The plaintiff entered into evidence a copy of the letter sent to the Defendant marked as "P1" and the registered post article receipt marked as "P1a". The Post Master had also given evidence to the veracity of "P1a" and had confirmed that it was indeed issued by the post office.

The Defendant, at this time, vehemently opposed the reception of the letter of quit notice.

The Attorney-at-law, Mr. Gamage, during initial questioning, had substantiated his position stating that he had typed and posted the letter for quit notice to the Defendant (Page 141 of the brief). However, in the very same line of questioning, he did not answer with certainty as to whether he had written the address of the Defendant on the letter, which the learned High Court Judge had correctly pointed out in his judgement. The recipient address being filed correctly forms the crux of the legal contention, as according to *Section 22 of the Rent Act No. 7 of 1972*, amended by the *Rent (Amendment) Act, No. 26 of 2002*, notice has to be served to the tenant before filing proceedings in a court of law.

The Post master, in his evidence (Page 128), has confirmed that the document marked "P1a" was an official receipt given by the post office. However, during cross questioning (page 132 and 133 of the brief) he stated that despite it being an official receipt, it is handed over with neither the name or the address of the recipient filled in. He later goes on to affirm that the only evidence of there being proof of delivery is by what is known as the pink receipt, signed by the recipient, which should be available at the distribution office, in this case the Wellawatte post office.

The Attorney-at-Law, Mr. Gamage, in his initial testimony (Page 139), stated that he received the post office receipt (P1a) with the address and name already filled in and later, during further questioning, he changed his stance, stating that it was in fact his junior lawyer, who filled in the receipt "P1a" (at page 156 of the brief). This court observes that the aforementioned junior lawyer has not given evidence and therefore finds the evidence lacking.

In order for the courts to make a presumption under Section 114(e) of the Evidence Ordinance that the letter has been sent to the address in dispute, there should be evidence that the address has been correctly written on the registered post.

Having carefully considered the evidence and the written submissions of both parties, I find that no presumption can be drawn, in light of the inconsistencies in the evidence of the Attorney-at-law, Mr. Gamage, the absence of corroborative evidence from the junior lawyer regarding Mr. Gamage's position and the authenticity of document "P1a," and the lack of evidence demonstrating that the address on the registered post was duly and properly filled. The learned high court judge has thoroughly and correctly analyzed the evidence and cited many relevant authorities as to why a presumption cannot be drawn.

As such, the judgement of the Civil Appellate High Court is affirmed and the questions of law raised are answered in the negative and the instant appeal is hereby dismissed.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

M. Sampath K. B. Wijeratne, J.

I agree.

JUDGE OF THE SUPREME COURT