

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

*In the matter of an Appeal under section
5C of the High Court of the Provinces
(Special Provisions) Act amended by Act
No. 54 of 2006.*

S.C. Appeal No:
69/2025

Sivagnanam Sivagumaran,
No. 1/1, Rasavalli Lane,
Wellawatte,
Colombo 06.

SC/HCCA/LA No:
230/2024

PLAINTIFF

Vs.

WP/HCCA/COL
242/2021(F)

Kanagaratnam Balasubramaniam,
No. 98, Wolfendhal Street,
Sri Ratnajothi Saravanamuttu
Mawatha,

DC Colombo Case No:
DRE 19/2017

Colombo 13.

DEFENDANT

AND NOW

Kanagaratnam Balasubramaniam,
No. 98, Wolfendhal Street,
Sri Ratnajothi Saravanamuttu
Mawatha,
Colombo 13.

DEFENDANT-APPELLANT

Vs.

Sivagnanam Sivagumaran,
No. 1/1, Rasavalli Lane,
Wellawatte,
Colombo 06.

PLAINTIFF-RESPONDENT

AND NOW BETWEEN

Kanagaratnam Balasubramaniam,
No. 98, Wolfendhal Street,
Sri Ratnajothi Saravanamuttu
Mawatha,
Colombo 13.

DEFENDANT-APPELLANT

APPELLANT

Vs.

Sivagnanam Sivagumaran,
No. 1/1, Rasavalli Lane,
Wellawatte,
Colombo 06.

PLAINTIFF-RESPONDENT-

RESPONDENT

Before

: Mahinda Samayawardhena, J.

: Sampath B. Abayakoon, J.

: Sampath K.B. Wijeratne, J.

Counsel : Manohara De Silva, P.C., with Hirosha Munasinghe
and Ms. Dilmini De Silva instructed by Ms. Lilanthi
De Silva for the Defendant-Appellant-Appellant.

: Akiel Deen with Vishakan Sarveswaran and
Shazeena Fathima instructed by R.M.S.P.
Rathnayaka for the Plaintiff-Respondent-
Respondent.

Argued on : 30-01-2026

Written Submissions : 13-02-2026 (By the Plaintiff-Respondent-
Respondent)

: 13-02-2026 (By the Defendant-Appellant-
Appellant)

Decided on : 18-06-2026

Sampath B. Abayakoon, J.

The defendant-appellant-appellant (hereinafter referred to as the defendant) preferred this appeal on being aggrieved of the judgment pronounced on 17-05-2024 by the High Court of the Western Province holden in Colombo, while exercising its civil appellate jurisdiction.

From the impugned judgment, the High Court dismissed the appeal preferred by the defendant and affirmed the judgment pronounced by the learned Additional District Judge of Colombo on 08-10-2021, wherein the action filed before the District Court was held in favour of the plaintiff of the action.

When this matter was considered before this Court on 16-05-2025 for the purpose of granting of leave to appeal from the impugned judgment, this Court granted leave on the following question of law.

1. Did the District Court and the High Court err in law in misconstruing and/or misinterpreting the provisions of section 36(2) of the Rent Act No. 07 of 1972 as amended, in the circumstances of this case?

At the hearing of the appeal, this Court heard the submissions of the learned President's Counsel who represented the defendant and the submissions of the learned Counsel who represented the plaintiff-respondent-respondent (hereinafter referred to as the plaintiff). This Court also had the benefit of considering the written submissions tendered by the parties in order to determine this appeal.

The Facts

The plaintiff filed action before the District Court of Colombo being the owner of the business premises morefully described in the schedule of the plaint, namely No. 98, Wolfendhal Street, Sri Ratnajothi Saravanamuttu Mawatha, Colombo 13, seeking a judgment to eject the defendant from the said premises. The position of the plaintiff was that the defendant has no right to occupy the premises in terms of the Rent Act after the demise of his mother, who was the lawful tenant of the business premises, since he is not carrying on the same business carried on by his mother.

The position taken up by the defendant had been that it is he who should be considered as the succeeding tenant in terms of the Rent Act and the action should be dismissed.

At the trial, it was an admitted fact that the defendant's father was the original tenant of the relevant business premises until he passed away in the year 1969. It has also been admitted that since his passing away, the defendant's mother, who was the wife of the original tenant, succeeded to the tenancy in

terms of the Rent Act, and she occupied and conducted the same business as her husband until her death on 29-01-2017.

Apart from the above specific admissions, parties have admitted averment no. 2, 4, 7, 11, 12 and 13 of the plaint, and also the documents P-01 to P-10 marked and produced along with the plaint.

The said averments refer to the fact that the plaintiff is the owner of the premises and the premises is governed by the Rent Act, and also the defendant's deceased mother had two other sons and a daughter.

The parties have admitted that the defendant, in reply to a letter dated 24-04-2017 written by the plaintiff, claimed that he is the successor to the tenancy of the premises in dispute (P-06), and also the fact that the plaintiff by the letter dated 07-05-2017 (P-07) replied to him requiring further details in that regard. It has also been admitted that by a letter dated 18-05-2017, the defendant replied to the plaintiff annexing letters from his siblings (P-08A, P-08B and P-08C), expressing that they are not objecting the tenancy being granted to the defendant.

The matter has proceeded to trial before the District Court based on 4 issues settled by the plaintiff, which are issues framed on the basis that the defendant would not fall under the protection of section 36(2) of the Rent Act, and therefore, the plaintiff is entitled to the reliefs prayed for in the plaint.

The defendant has raised his issue No. 05 to 08 seeking for the dismissal of the plaint on the basis that he, along with his mother, has been conducting a business that sells ayurvedic medicine since 1969 at the relevant premises, and therefore, he is entitled for the protection of the Rent Act.

The learned Additional District Judge of Colombo, of her judgment dated 08-10-2021, held that the plaintiff has proved his case, whereas the defendant failed to establish his stand. It has been determined by the learned Additional District Judge that the defendant is not conducting the same business carried

on by his mother at the time of her demise, and therefore, he is not entitled to any protection in terms of section 36(2) of the Rent Act.

When the judgment of the learned Additional District Judge was appealed against to the Provincial High Court of the Western Province, the learned Judges of the High Court, of their judgment dated 17-05-2024, held the same view, and accordingly, the appeal was dismissed with costs.

At the hearing of this appeal, it was strenuously argued by the learned President's Counsel who represented the defendant that the evidence led in the action has clearly established the fact that the defendant, as a child of the deceased tenant of the premises, carried on the same business with her until she passed away. Therefore, for the purposes of section 36 of the Rent Act, he is deemed to be the tenant who succeeded the deceased tenant.

It was his position that, although the defendant owns a separate business named Yogarajah Brothers, it is he who carried out the same business of dealing in tobacco and ayurveda products with his deceased mother in the premises under the name of Mahalakshmi Stores. He submitted that the defendant has sufficiently established that he is carrying on the business of his mother, the previous tenant, and therefore, the plaintiff cannot succeed in this action.

It was his position that both the High Court as well as the District Court erred when it was determined that the defendant had changed the nature of the business carried on by his mother after her demise, and hence, he is not entitled to the benefits in terms of section 36(2) of the Rent Act.

It was the position of the learned Counsel for the plaintiff that evidence led before the District Court has clearly established the stand of the plaintiff that the defendant, by his own conduct, has disqualified himself of being recognized as the succeeding tenant of the premises in terms of the Rent Act, and therefore, there exists no basis for the appeal preferred by the defendant.

Consideration of the Question of Law

It is undisputed that the original tenant of this business premises had been the father of the defendant and after his demise in 1969, his wife, the mother of the defendant, has been recognized as the lawful tenant.

The defendant in his evidence led before the trial Court on 21-01-2019 (page 118 of the appeal brief) has admitted that his father carried on a business of selling Beedi and Beedi leaves in the premises under the name of Mahalakshmi Stores and his mother also carried on the same business.

It has been contended by the defendant that while his mother was living, she gave a Power of Attorney to him, allowing him to conduct the same business at the premises. It was also undisputed that the other siblings of the defendant have consented in writing for the defendant to be recognized as the statutory tenant after the demise of their mother. In his evidence, the defendant has maintained that his mother carried on the selling of Beedi and Beedi leaves at the premises only as a nominal entity, and in 1980, she commenced a business of selling ayurvedic products and at the time of her death, the said business continued without any objection from the landlord.

However, the stand taken by the plaintiff before the trial Court has been that the defendant who was in the business of selling ayurvedic products from another location commenced the same business of selling ayurvedic products in the premises, and thereby, converted it into a separate business than the business carried out by the deceased tenant.

Therefore, the pivotal question that should be considered in this appeal is whether the defendant has disqualified himself from being considered as the succeeding tenant under the provisions of section 36(2)(c) of the Rent Act as amended.

The relevant section 36(2)(c) of the Rent Act reads as follows -

36. (2) (c) in the case of business premises -

- i. is the surviving spouse or the child of the deceased tenant, where such spouse or child carries on in such premises the business carried on by the deceased tenant; “or”**
 - ii. is a partner in the business or heir to the business, carried on by the deceased tenant; “or”**
 - iii. is the executor or administrator of the estate of the deceased tenant,**
- shall, subject to any order of the Board as hereinafter provided, be deemed for the purpose of this Act to be the tenant of the premises:**

The above section clearly set out that for the defendant to be deemed the rightful tenant of this business premises, he should have carried on with the business his mother was conducting at the time of her death.

The evidence led before the trial Court has clearly established that the defendant is the owner of a separate business in the name of Yogarajah Brothers where the principal place of business is No. 24, New Hetti Weediya, Colombo 13. The said business has been registered as a business in the nature of General Traders, Beedi Leaves, Tobacco and Beedi, Food Items, and Ayurvedic Medicine, and also an importer and selling of oil business (P-10).

The letter marked D-11, which was a letter issued by the defendant’s own auditors and tax consultants, says that they audited the accounts of Yogarajah Brothers owned by the defendant for the past 25 years at No. 98, Wolfendhal Street, Colombo 13.

It was a document considered by the High Court as well, which shows that the defendant has been running a business different from the business carried on by his mother under the business name of Mahalakshmi Stores.

Although the defendant has claimed that he is carrying on the business of selling ayurvedic products from premises No. 24, New Hetti Weediya, Colombo 13, and continuing the business which was carried on by his mother at the questioned premises, I find that the evidence before the trial Court has shown otherwise.

The document marked D-09 is a letter issued by Pasyale Ayurveda Osu (Pvt Ltd) where the said company has confirmed that they have been supplying ayurvedic products to the defendant's business premises situated at No. 98, Wolfendhal Street, Colombo 13.

I find that there was no evidence before the trial Court to show that the mother of the defendant carried on any business other than the selling of Beedi and Beedi leaves under the name of Mahalakshmi Stores. The evidence led before the Court, when taken in its totality, clearly establishes the fact that the defendant who is claiming the benefits in terms of section 36(2)(c) of the Rent Act has not continued with the same business, but has been running the business affairs connected to his own business registered at No. 24, New Hetti Weediya, Colombo 13 at the premises in question.

At this juncture, I would like to distinguish the observations of **S. N. Silva, J.** (as he was then) in the Court of Appeal judgment of **Abdul Kalyoom Vs. Mohamed Mansoor 1988 1 SLR 361** from the facts of this case, where it was stated that it is imperative on a landlord to go before the Rent Board and obtain a determination as to the succeeding tenant in terms of section 36(2) of the Rent Act.

In the said case, there were several parties who conducted the business after the death of the original tenant, and it was in that context that the said observation has been made emphasizing the necessity to determine who is the rightful tenant who can succeed.

However, I find that it is the observations of **Fernando, J.** in the Supreme Court judgment of **Gomez Vs. Bernard (1993) 1 SLR 396** applicable to the instant situation where there was no question as to who, among the children

of the tenant, deem to be the statutory tenant as all other children of the deceased tenant have consented in writing to consider the defendant as the succeeding tenant.

It was stated at page 401-

“Where the landlord is aware that there are two or more persons who satisfy, or appear to satisfy, the requirements of section 36(2)(c), he would be uncertain whom to accept as the tenant; section 36 (3) would oblige him to apply to the Rent Board for an order to determine that question, as held in Kalyoom v. Mansoor. I find it difficult to agree with the observations of S. N. Silva, J., suggesting that even if there is only one qualified person, the landlord must make an application under section 36 (3): if, for instance, there is an executor who has obtained probate, and there are no persons qualified under clauses (i) and (ii) of section 36 (2) (c), there seems to be no good reason why the landlord should apply under section 36 (3). The language of sub-sections (3) and (4) contemplates an application being made, and notice being issued, where there are “persons” who may be deemed to be tenants. The only exception might be where there is only one person who appears to be qualified, but some doubt exists as to his right. Where, however, there is no person prima facie eligible to succeed, there is no obligation on the landlord to make an application under section 36 (3). it was not contended in the present case that the Plaintiff was obliged to make an application under section 36 (3); probably because it was clear that she was unaware that there was any person prima facie eligible to succeed under section 36 (2) (c).”

I find that although it was claimed that the defendant is carrying on substantially the same business of his mother, the evidence led at the trial has not established that fact. Obtaining a Power of Attorney from his mother also does not establish that it was the same business of his mother that continued after her death.

For the reasons as considered above, I find that the learned Judge of the District Court as well as the learned Judges of the High Court have come to correct findings that the defendant is not a person who is entitled to be recognized as the tenant in terms of section 36(2)(c) of the Rent Act after the death of his mother.

I hold that both the Courts have correctly considered and interpreted the provisions of the said section, which need no disturbance from this Court. Accordingly, I answer the question of law under which this appeal was considered in the negative.

The appeal is dismissed. There will be no costs of this appeal.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court

Sampath K.B. Wijeratne, J.

I agree.

Judge of the Supreme Court