

VIOLET PERERA  
V.  
ASILIN NONA

SUPREME COURT.  
FERNANDO, J.  
AMERASINGHE, J. AND  
WIJETUNGA, J.  
S. C. APPEAL NO. 63/94  
C.A. NO. 140/87.  
D. C. COLOMBO NO. 6039 RE.  
MAY 17, 1995.

*Landlord and tenant - Payment of rent under section 21 of Rent Act - Payment to authorized person.*

The plaintiff's mother after an unsuccessful attempt to evict the defendant gifted the tenanted premises to her daughter the plaintiff. The defendant was duly informed of this by the plaintiff's lawyer and the lawyers who attested the deed, but the defendant called for a copy of the deed from the plaintiff's mother and receiving no response continued to deposit the rent in the Municipality in favour of the plaintiff's mother. The plaintiff filed this suit in August 1984 and summons was ordered on 13.11.84. On 14.11.84 the defendant delivered to the Municipality rent for September and October 1984.

**Held:**

(1) The defendant was not justified in not paying rent to the plaintiff. A request for the documents may have been justified if conflicting claims were being made as for instance by persons claiming under a Last Will, intestacy, and donation. This was not one of those instances.

(2) The Municipal Council cannot transmit money orders (or other documents such as cheques) made out in favour of one person to another.

(3) The defendant has not complied with the requirements of section 21(1) of the Rent Act whereunder the tenant must pay the rent to the authorized person. A payment to the authorized person means, *prima facie*, an actual payment to him i.e. one which augments his funds. Section 21(3) requires him to transmit the amount of such payment to the landlord; this means *prima facie* that he must make a payment to the landlord and not merely transmit the document deposited by the tenant.

(4) The purpose of section 21 is not to substitute the authorized person for the postal services, or other means of delivery or tender of rent payments (whether

made by cheque, money order or otherwise). The purpose is to prevent a tenant who wishes to pay rent to the landlord being placed in a real difficulty or dilemma - as where the landlord refuses or evades the acceptance of rent, or there is uncertainty as to who the real landlord is. In those situations, a payment by the tenant which augments the funds of the authorized person is equivalent to a payment to the landlord.

**Per Fernando, J.**

The tender to, or deposit with the authorized person of money orders, cheques or other instruments made out in favour of someone other than the authorized person is not, properly speaking, a payment to the authorized person. However, it is arguable that such instruments are also within the scope of section 21, if made out in favour of the real landlord provided that they are duly realised. But if it turns out that the real landlord is not the person in whose favour such instrument is drawn, then clearly the tenant cannot be regarded as having paid the rent to the landlord of the premises. In case of doubt as to who the landlord is, the tenant will be well-advised to pay the authorized person.

**Cases referred to:**

1. *De Alwis v. Perera* (1951) 52 N.L.R. 433.
2. *Silva v. Muniamma* (1955) 56 N.L.R. 357.
3. *De Silva v. Abeyratne* (1955) 56 N.L.R. 574.
4. *Perera v. De Costa* (1955) 57 N.L.R. 283.
5. *David Silva v. Madanayake* (1967) 69 N.L.R. 396.
6. *Perera v. Padmakanthi* (1987) 2 Sri L.R. 1.
7. *Subramaniam v. Pathmanathan* (1984) 2 Sri L.R. 252.
8. *Seelawathie v. Ediriweera* S.C. 65/87 - S. C. Minutes of 3.11.89.
9. *Perera v. De Saram* S. C. 27/92 - S.C. Minutes of 26.10.93.
10. *Perera v. De Silva* (1988) 1 Sri L. R. 351.

**APPEAL** from judgment of Court of Appeal.

*Faisz Mustapha P.C.* with *Hemasiri Withanachchi* for Plaintiff-Respondent-Appellant.

*S. Mahenthiran* for the Defendant-Appellant-Respondent.

July 7, 1995.

**FERNANDO, J.**

This appeal involves a question of law as to how a tenant should pay rent under section 21 of the Rent Act, No 7 of 1972.

The original landlord of the premises in suit failed in an action to eject her tenant, the Defendant-Appellant-Respondent ("the Defendant"). Within a month, A. W. de Silva, Notary Public, acting on behalf of the original landlord, wrote a letter dated 16.12.82 to the Defendant informing her that the landlord had gifted the premises to her daughter, the Plaintiff-Respondent-Appellant ("the Plaintiff") by Deed No. 293, dated 8.12.82, attested by himself, and asking her to attorn to, and pay rent to, the Plaintiff. A similar letter dated 17.12.82 was written to the Defendant, by a lawyer acting on behalf of the Plaintiff.

The original landlord, by a letter dated 12.1.83, informed the Mayor of Colombo (the "authorized person" as defined by section 21(4) of the Rent Act) that the premises had been transferred to the Plaintiff, and that the tenant had been duly notified; she asked that the Plaintiff's name and address be substituted as the landlord entitled to receive the rent of the premises. She copied this letter to the Defendant.

On 25.1.83 an Attorney-at-Law replied on behalf of the Defendant to the letter of 16.12.82. However, he wrote to the original landlord, and not to A. W. de Silva, N.P. He asked for a certified copy of the deed for perusal, saying that his client had instructed him to make that request; he gave no other reason for this request, and did not even hint at any uncertainty about the transaction. This letter was not copied to the Plaintiff, nor was the Plaintiff asked for a copy of the deed, by that or any other letter. There was no response to this letter.

It is common ground that (a) in respect of the period January 1983 to August 1984, the Defendant delivered to the Municipal Council, money orders in favour of the original landlord, (b) the Municipal Council issued receipts to the Defendant in which the Plaintiff's mother was described as landlord, and (c) these money orders were neither sent to the Plaintiff by the Municipal Council nor claimed by her.

The Plaintiff filed action for ejectment in August 1984; on 13.11.84,

order was made for the issue of summons; and on 14.11.84 the Defendant delivered to the Municipal Council money orders in respect of rent for September and October 1984 made out in the name of the Plaintiff.

When the issues were first framed, the Plaintiff proceeded on the basis that she was entitled to ejectment because the Defendant had failed to attorn. However, thereafter an issue was framed on the basis of arrears of rent. It is on that issue that the trial and the appeals in both Courts proceeded.

No submission has been made on the question of attornment. It is settled law that a tenant's continuation in occupation of the rented premises, after receiving notice of the transfer and of the transferee's election to recognise him as the tenant, constitutes an exercise of the tenant's option to acknowledge the transferee as the landlord; that the tenant thereupon becomes liable to pay the rent to the transferee; and that on default, the transferee is entitled to sue the tenant for rent, damages and ejectment: see *De Alwis v Perera*,<sup>(1)</sup> *Silva v Muniamma*<sup>(2)</sup>, *De Silva v Abeyratne*<sup>(3)</sup>, *Perera v de Costa*<sup>(4)</sup>, *David Silva v Madanayake*<sup>(5)</sup>, *Perera v Padmakanth*<sup>(6)</sup>, *Subramaniam v Pathmanathan*,<sup>(7)</sup> and *Seelawathie v Ediriweera*.<sup>(8)</sup>

The only question that was argued, in both Courts, was whether the Defendant had duly discharged her obligation to pay rent, for the period January 1983 to August 1984, by tendering to the Municipal Council money orders in the name of the original landlord. It is agreed that if this does not constitute due payment of rent to the Plaintiff, under and in terms of section 21 of the Rent Act, the District Court was right in giving judgment for the Plaintiff (for rent, damages and ejectment), and that the Court of Appeal ought not to have reversed that judgment.

**Section 21 provides:**

21. (1) The tenant of any premises may pay the rent of the premises to the authorized person instead of the landlord.

(2) Where any payment of any rent of any premises is made on any day in accordance with the provisions of sub-section (1), it shall be deemed to be a payment received on that day by the landlord of the premises from the tenant thereof.

(3) Where the rent of any premises is paid to the authorized person, the authorized person shall issue to the tenant of the premises a receipt in acknowledgement of such payment, and shall transmit the amount of such payment to the landlord of the premises. It shall be the duty of such landlord to issue to the authorized person a receipt in acknowledgement of the amount so transmitted to him.

(4) In this section, "authorized person", with reference to any premises, means the Mayor, or Chairman of the local authority within whose administrative limits the premises are situated or the person authorized in writing by such Mayor or Chairman to receive rents paid under this section, or where the Minister so determines, the Board of the area within which the premises are situated.

Learned Counsel for the Defendant submitted that;

(1) The Defendant was entitled to continue to pay rent to the original landlord until she was given a copy of the deed, because she was naturally apprehensive about this transaction occurring so soon after an unsuccessful attempt to eject her; he concedes, however, that in her evidence she neither gave such a reason for this request, nor explained why she had suddenly started making payments in the name of the Plaintiff in November 1984;

(2) The original landlord's letter of 12.1.83 constituted a direction to the Municipal Council to transmit payments of rent to the new landlord, the Plaintiff; and that the defendant was not in default - the default, if any, was that of the Municipal Council, which failed to transmit the payments to the Plaintiff; and

(3) In any event, the tenant's obligation under section 21 was satisfied, even if the rent had not actually been transmitted to the landlord. Since it has been held in *Perera v de Saram*, that the mere deposit of rent, even without specifying the name of the landlord, was sufficient, it follows that the tender of the money orders in the name of the original landlord was also sufficient.

In this case the three letters which the Defendant received, between 16.12.82 and 12.1.83, were perfectly clear and quite unambiguous. It is difficult to understand why her lawyer asked for a copy of the deed. If he

really required it, he should have asked either the Plaintiff, who, as the donee, would have had the original in her possession, or A. W. de Silva the Notary who had attested it. Instead he chose to ask the donor, who had no further interest in the matter; as far as she was concerned, she had done her duty by informing her tenant of the transfer, and her failure to reply, or to furnish a copy of the deed, cannot be held against the Plaintiff.

Further, it should have been obvious to the Defendant's lawyer that the Defendant ran no risk whatever in paying rent to the person designated by the original landlord. If in fact the premises had not been transferred, the original landlord would have been estopped from claiming that the Defendant had fallen into arrears simply because she had paid rent as directed by the former. If the premises had been transferred, payment to the transferee was in order.

I therefore cannot accept the submission that the Defendant was justified in not paying rent to the transferee pending clarification. A request for the documents may have been justified if there had been some doubt as to the Plaintiff's right to receive the rent: such doubts may have arisen, for instance, upon the death of the landlord if conflicting claims were then made, by persons claiming under a last will, intestacy, and donation, respectively. This is not one of those instances.

I hold that the Defendant was not entitled to continue to treat the original landlord as her landlord, or to pay rent to her.

Learned Counsel's second submission is wholly without merit. The letter of 12.1.83 cannot possibly be treated as a direction to the Municipal Council to accept money orders in the name of the original landlord, and to transmit them to the new landlord. It was plainly a notification that the transferee should be substituted, in all respects, as landlord. In any event, any uncertainty in this respect was not created by the Plaintiff, and cannot be held against her.

Equally, the Municipal Council cannot be blamed for not transmitting money orders (or other instruments) such as cheques, made out in favour of one person, to another. That would not only have been improper, but might even have resulted in allegations of misappropriation. Further, money orders in her mother's name would have been of no use to the

Plaintiff. Learned Counsel submits that the Plaintiff could have returned those money orders to the Defendant and obtained replacements. That, however, is not the object of section 21. If that was what the Defendant wanted, much time and energy could have been saved by making payments to the Plaintiff directly, in the first instance.

Finally, the Defendant has not complied with the requirements of section 21(1). That section requires the tenant to “pay” the rent to the “authorized person”. A payment to the authorized person means, *prima facie*, an actual payment to him, i.e. one which augments his funds. He is then required by section 21(3) to “transmit the amount of such payment to the landlord; this means *prima facie*, that he must make a payment to the landlord, and not merely transmit the document deposited by the tenant.

In the case of a payment to the authorized person, the tender of a cheque, if issued without funds or if payment is stopped, will obviously not constitute a payment in terms of section 21(1); and the landlord will therefore not be deemed, under section 21(2), to have received payment of the rent.

The purpose of section 21 is not to substitute the authorized person for the postal services, or other means of delivery or tender of rent payments (whether made by cheque, money order or otherwise). The purpose is to prevent a tenant who wishes to pay rent to the landlord being placed in a real difficulty or dilemma - as where the landlord refuses or evades the acceptance of rent, or there is uncertainty as to who the real landlord is. In those situations, a payment by the tenant which augments the funds of the authorized person is equivalent to a payment to the landlord.

While this question was not expressly discussed in *Perera v de Saram*<sup>(9)</sup>, it would seem that the payment in that case was to the authorized person: Dheeraratne. J. observes that the landlord's name was not entered in the receipts or in the Rent Register.

However, it has been held that section 21 should not be construed in an unduly narrow and technical manner: *Perera v de Silva*,<sup>(10)</sup>. The tender to, or deposit with the authorized person of money orders, cheques or other instruments, made out in favour of someone other than the authorized person, is not, properly speaking, a payment to the authorized person.

However, it is arguable that such instruments are also within the scope of section 21, if made out in favour of the real landlord provided that they are duly realised. But if it turns out later that the real landlord is not the person in whose favour such instrument is drawn, then clearly the tenant cannot be regarded as having paid the rent to the landlord of the premises. In case of doubt as to who his landlord is, the tenant will be well-advised to pay the authorised person.

Here there was no doubt as to the person entitled as landlord, to the rent as from January 1983: by tendering or depositing money orders in favour of the former landlord the Defendant did not discharge her obligation to pay rent in terms of section 21 or the common law. She was therefore in arrears of rent.

The Plaintiff's appeal succeeds. The Judgment of the Court of Appeal is set aside, and the judgment of the District Court is restored. The Appellant will be entitled to costs of appeal in both Courts in a sum of Rs. 5,000.

**AMERASINGHE, J.** – I agree.

**WIJETUNGA, J.** – I agree.

*Appeal allowed.*