
**SOYSA
VS.
R. C. PERERA**

SUPREME COURT
S.N. SILVA, CJ
YAPA, J AND
JAYASINGHE, J
SC APPEAL 34/2003
CA 630/88(F)
D. C. PANADURA CASE NO. 18734/RE
8TH 19TH AND 28TH OCTOBER, 2004

Landlord and Tenant-Deterioration of the house let- Relevant time of deterioration for ejectment.

The plaintiff sued the defendant for ejectment of the defendant from premises No. 309, main street Panadura on the ground of arrears of rent and deterioration of the premises let. The plaintiff abandoned the 1st cause of action and pressed the 2nd cause of action on the basis that the defendant tenant had made an opening of the wall in premises No. 309 to reach the adjoining premises No. 307 of which the defendant was also the tenant.

The defendant averred that the said opening was effected in 1970 with the consent of the plaintiff's father whereas the notice to quit was given in October 1983. The District Judge dismissed the action and the plaintiff appealed to the Court of Appeal.

It was revealed that as per two plans No. 254 dated 24.05.1983 and No.745 dated 15.12.1980, the alleged opening of the wall had been effected after 1980. By that opening the defendant had converted premise Nos. 307 and 309 into one premises and obtained access to premises No. 307. The Court of Appeal allowed the appeal and gave judgment for the plaintiff appellant. The defendant appealed to the Supreme Court.

HELD :

On the basis of the available evidence there was no merit in the appeal of the defendant.

Case referred to :

1. *De Silva v Seneviratne* (1981) 2 Sri LR 7

APPEAL from the judgment of the Court of Appeal.

L. C. Seneviratne, P. C. with *Ranjan Gunaratne* for defendant-appellant

R. de Silva, P. C. with *Harsha Amarasekara* for plaintiff -respondent.

Cur.adv.vult.

November 22, 2004

JAYASINGHE, J.

The plaintiff- appellant - respondent hereinafter referred to as plaintiff, the owner and land lady of the premises bearing assessment No. 309 Main Street, Panadura instituted action in the District Court of Panadura against the defendant - respondent-appellant hereinafter referred to as the defendant for ejection on the ground that the defendant was

1. in arrears of rent and
2. for causing deterioration of the premises in suit in terms of section 22 (1) (d) of the Rent Act by making an opening in the common wall that separates the said premises from premises No. 307.

It appears that at the trial the plaintiff abandoned the first ground as above and relied only on the second ground for ejection.

The defendant was also the tenant of the adjoining premises bearing Assessment No. 307.

It was the position of the defendant that the said opening on the said wall was effected in the year 1970 with the consent and approval of the plaintiff's father. Plaintiff however, came to court on the basis that the opening was made between 1980-1983 and that she sent the defendant notice to quit in October 1983, no sooner she became aware of the structural

alteration causing a deterioration of the premises. The learned District Judge dismissed the plaintiff's action and the plaintiff appealed to the Court of Appeal. Their Lordship's having considered the reasoning laid down in *De Silva vs. Seneviratne* 1981⁽¹⁾ took the view that it was a fit case for the Court of Appeal to interfere with the findings on questions of fact since the learned District Judge failed to make a proper evaluation of the facts placed before him at the trial. On a reappraisal of the evidence disclosed before the District Court, the Court of Appeal rejected the finding that the opening on the wall was made in 1970 with the knowledge and consent of the plaintiff's father. Court observed that the defendant failed and neglected to respond to the quit notice and replied five months after the death of the plaintiff's father. That approval was obtained from the plaintiff's father. The Court of Appeal was also influenced by the fact that one Daya Liyanage who owned premises No. 307 was not called as a witness even though he was available to support the defendant's contention that the said opening was made in 1970. The plaintiff relied on Sirisena Liyanage, a surveyor who prepared plan No. 254 dated 24.05.1985 on a Commission issued by Court. He had stated in his evidence that he had used plan No. 748 dated 15.12.1980 prepared by B. L. D. Fernando marked P3, which did not indicate any entrance in the wall which separated premises No. 309 from 307. This evidence established that the entrance in the wall came into existence only after 08.12.1980.

Having rejected the contention of the defendant that the opening was made in 1970, the Court of Appeal thereafter considered whether the opening made in the common wall caused deterioration of the premises in suit. The Court of Appeal on a evaluation of the evidence disclosed in the District Court held that the strength of the wall was diminished as a result of the opening; that the two separate premises owned by two distinct owners namely 307 and 309 in effect was converted into one premises and the opening providing access from one premises to another. These factors taken together Court held, that opening caused deterioration of the condition of the premises.

Having carefully considered the findings of the Court of Appeal, I see no merit in this appeal of the defendant-respondent appellant. The appeal is accordingly dismissed with costs.

S. N. SILVA, C. J. — I agree.

YAPA, J. — I agree.

Appeal dismissed.
