

**MARKET MAKERS (PRIVATE) LTD.****vs.****D. N. PERERA**

COURT OF APPEAL  
SOMAWANSA, J, (P/CA) AND  
WIMALACHANDRA, J.  
CALA 169/05 (LG)  
DC COLOMBO 727/SPL.  
MAY 30, 2005.

*Contract of tenancy – Best test – Best evidence – Proof of payment of rent – Rent receipts – Prima facie proof – Interference with tenants' enjoyment of property by owner / landlord - Termination by illegal methods.*

The plaintiff-appellant (sub tenant) entered into occupation of the premises in question as the tenant of the defendant-respondent. The defendant-respondent had forcibly threatened the plaintiff's employees and ordered them to vacate the premises and had also disconnected the electricity/water supply in an attempt to evict the plaintiff appellant illegally and unlawfully from the premises in question.

The plaintiff appellant instituted action seeking a declaration that the plaintiff is entitled to occupy the premises in question and for a declaration that the plaintiff is entitled to have electricity/water supply to the premises occupied by the plaintiff. The enjoining order prayed for was refused and only notice of an interim injunction issued on the ground that there was no written agreement between the plaintiff and the defendant with regard to a contract of tenancy. The plaintiff had produced rent receipts which had been signed by the defendant, the defendant's address appears on the rent receipts, showing that the receipts had been issued by the defendant.

**HELD:**

- (1) The best test for establishing tenancy is proof of the payment of rent. The best evidence of the payment of rent is the rent receipts. There is prima facie proof that the plaintiff is the monthly tenant of the defendant. The rent receipts show that the rent had been paid to the defendant. The defendant had acknowledged the receipt of payments by signing the rent receipts.

- (2) The landlord has a duty not to interfere with the tenant's enjoyment of the property. Even if the plaintiff is the subtenant of the defendant the defendant has no right to interfere with his tenant's enjoyment of the property. He has no right to disconnect the supply of electricity/water. He must resort to legal methods recognized by law to terminate the tenancy.

**APPLICATION** for leave to appeal with leave being granted.

**Case referred to :**

*Jayawardane vs. Wanigasekera and Others 1985 1 Sri LR 125*

*Nihal Fernando, P. C. with Rohan Dunuwila for plaintiff appellants.*

*Faizer Musthapha for defendant-respondent.*

*Cur.adv.vult.*

June 14, 2005.

**WIMALACHANDRA, J.**

This is an application for leave to appeal from the order of the District Judge of Colombo dated 10.05.2005. By that order the learned Judge refused to grant the enjoining order prayed for, pending the inquiry into the application for an interim injunction.

Briefly, the facts relevant to this application are as follows:

The plaintiff-petitioner (plaintiff) alleged that it entered into occupation of the premises No. 353, R. A. de Mel Mawatha, Colombo 03 as the tenant of the defendant-respondent (defendant) on or about April 2001 and occupied the ground floor of the premises No. 353 and No. 353-1/1, the entirety of the upper floor. The plaintiff stated that it paid Rs. 95,000 as the monthly rent and continued to pay upto 1st April 2005. On 1st April 2005 the defendant with two others had entered the premises occupied by the plaintiff, forcibly threatened the plaintiff's employees and ordered them to vacate the premises. On the same day the defendant had disconnected the electricity and water supply to the area occupied by the plaintiff in an attempt to evict the plaintiff illegally and unlawfully from the said premises. The plaintiff had thereafter

instituted action in the District Court for a declaration that the plaintiff is entitled to occupy the area highlighted in pink in the sketch marked "A" with the plaint of the said premises described in the schedule to the plaint and for a declaration that the plaintiff is entitled to have electricity and water supply to the area occupied by the plaintiff, highlighted in pink in the sketch marked "A". The plaintiff has also sought a permanent injunction in terms of paragraph 'C' of the prayer to the plaint, and an interim injunction and an enjoining order in terms of paragraphs 'd' and 'c' of the prayer to the plaint.

The plaintiff had supported the application before the District Judge, *inter partes*, for an enjoining order pending the inquiry into the application for an interim injunction. The District Judge by order dated 10.05.2005 had refused to issue an enjoining order but issued notice of an interim injunction and summons on the defendant. It is against this order, refusing to issue an enjoining order as prayed for in the plaint, the plaintiff has filed this application for leave to appeal.

The learned District Judge refused to grant an enjoining order mainly on the ground that there was no written agreement between the plaintiff and the defendant, with regard to a contract of tenancy. The plaintiff produced the rent receipts marked 'B1' to 'B9'. The rent receipts had been signed by the defendant and the defendant's address is in the rent receipts, showing that the said rent receipts had been issued by the defendant. [A cheque on account of six months rent from 01.04.2005 to 30.09.2005 had been sent by the plaintiff to the defendant, with a covering letter dated 30.03.2005 (vide-documents marked 'C' and 'C1' annexed to the petition). The defendant had accepted the said cheque as damages].

The learned counsel for the defendant submitted that there is no averment in the plaint as regards to the date of the commencement of the occupation by the plaintiff and also there is no averment that the plaintiff was the monthly tenant of the defendant. In paragraph six of the plaint, the plaintiff states that the plaintiff company entered into an agreement with the defendant to lease the area highlighted in pink in the sketch annexed marked 'A' with the plaint on the following terms. (a) monthly rent to be Rs. 95,000, (b) the plaintiff to receive and pay the electricity bill in full and obtain a reimbursement of 35% of the amounts of the bills from the defendant on account of its usage of electricity, (c) the plaintiff to receive

and pay the water bills in full for the entire building. The Plaintiff produced, annexed to the petition, copies of rent receipts marked 'B1' to 'B10'. On 30/03/2005 the plaintiff had forwarded cheque No. 408668 dated 30.03.2005 of Public Bank with a covering letter to the defendant being the rent for the premises No. 353 and 353 1/1. R.A..De Mel Mawatha, Colombo 03. The amount in the cheque was the rent for six months from April 2005 to September, at the rate of Rs. 95,000 per month for the said premises. It is to be noted that there is an endorsement in the letter marked "C" that the cheque had been received by D. Perera, the defendant. The document marked "C2" is a copy of the relevant page of the bank statement of the plaintiff's current account, which shows that the said cheque had been presented for payment and the defendant had received payment from the plaintiff's bank.

In the case of *Jayawardena vs. Wanigasekera and others* Moonamalle J. stated—

**“The best test for establishing a tenancy is proof of the payment of rent. The best evidence of the payment of rent is the rent receipts.”**

In the instant case the plaintiff produced the rent receipts signed by the defendant. In applying the test laid down by Moonamalle, J. in *Jayawardena vs. Wanigasekera and others* there is *prima facie* proof that the plaintiff is the monthly tenant of the defendant.

The learned Counsel for the defendant submitted that the defendant was only a tenant and that the owner of the premises was one Christy in whose name the electricity bills were paid. The learned counsel further submitted that in any event the tenancy was with one Jayaseelan, a former director of the plaintiff company. In answer to this allegation the plaintiff contended that the said Jayaseelan negotiated the tenancy on behalf of the plaintiff-company which is borne out by the letter marked 'J' annexed to the plaint. However these are matters that have to be proved at the trial. It must be noted that there is *prima-facie* proof that the plaintiff is the monthly tenant of the defendant as stated above. The rent receipts produced by the plaintiff show that the rent had been paid to the defendant and the defendant had acknowledged the receipt of payments by signing the rent receipts.

The plaintiff stated that on 01.04.2005 the defendant had wrongfully disconnected the electricity and water supply to the rented premises occupied by the plaintiff bearing assessment No. 353 and 353-1/1. R. A. de Mel Mawatha, Colombo 03. The landlord has no right to interfere with the peaceful occupation of the rented out premises.

H. W. Thambiah in his book "Landlord and Tenant in Ceylon", 1st edition, at page 81 states thus:

**"The landlord has a duty not to interfere with the tenant's enjoyment of the property."**

The plaintiff stated that he has no contract or agreement with the owner but only with the defendant. In the circumstances the allegation made by the defendant that the plaintiff deliberately failed to disclose the owner of the premises is not a material fact. The non-disclosure of the name of the owner of the premises will not affect the merits of the plaintiff's case as the plaintiff's position is that he obtained the premises in question from the defendant and he paid the rent to the defendant, and not to the owner of the premises.

As regard to the legal position where there is a tenant and a sub-tenant, G. L. Peiris in his book "The Law of Property in Sri Lanka," Volume Two, "Land Lord and Tenant" at page 347 states as follows:

"Where a tenancy and sub-tenancy are both seen to coexist, the rent under the main tenancy is payable by the tenant to the landlord, while the rent under the sub tenancy is payable by the sub-tenant to the tenant. The proper view is that each of these co-existing contracts remains in force until it is terminated by due notice or some other manner recognized by law"

In these circumstances, even if the plaintiff is the sub-tenant of the defendant, the defendant has no right to interfere with his tenant's enjoyment of the property. The defendant has no right to disconnect the supply of electricity and water. The defendant must resort to legal methods recognized by law, to terminate the tenancy.

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As regards the balance of convenience, if the enjoining order is not granted pending the determination of the application for an injunction, the defendant would resort to evict the plaintiff by means not recognised by law. It appears that the plaintiff has been paying rent to the defendant and has even paid rent in advance for the period of April 2005 to September 2005 as evident by documents marked 'C', 'C1' and 'C2'.

On a consideration of the totality of the documentary evidence and the submissions made by the counsel it appears to me that the learned District Judge has arrived at a wrong conclusion that there is no contract of tenancy between the plaintiff and the defendant as there is no written agreement between them. As Justice Moonamalle, pointed out in *Jayawardene vs. Wanigasekera (supra)* the best test for establishing a tenancy is proof of the payment of rent. The best evidence of the payment of rent is the rent receipts. In the instant case rent receipts signed by the defendant were produced and there is reference to the payment of rent.

For these reasons, leave to appeal is granted from the order of the learned District Judge dated 10.05.2005 and for the same reasons we allow the appeal and set aside the aforesaid order of the learned District Judge and grant the enjoining order as prayed for in prayer 'e' of the prayer to the plaint. We direct the learned District Judge to inquire into the application for an interim injunction as prayed for in the plaint. The appellants are entitled to recover the costs of this appeal.

**Somawansa, J. (P/CA) — I agree.**

*Appeal allowed.  
Enjoining order granted.*

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