

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

M. Nadarajamoorthy,
31/5, C.G.R. Building,
Bus Stand, Ragala,
Halgranoya.

Plaintiff-Appellant

Court of Appeal Case No. C.A. 662/97 (F)

D.C. Nuwara Eliya Case No. 36/88/RE

Vs.

1. Palanimuthu Dharmaseelan,
31/5, C.G.R. Building,
Bus Stand, Ragala, Halgranoya.
(now deceased)
1. A. Saroja Dharmaseelan
B. Dharmaseelan Puvi Alahan
C. Dharmaseelan Madiwadan
D. Dharmaseelan Sugumal
E. Dharmaseelan Kirubaharan

All of Factory Division, Peduro Estate,
Nuwara Eliya.

Substituted 1st Defendant - Respondent

2. Fuard,
Lanka Jathika Estate Workers Union,
48, Rewatha Building,
Nuwara Eliya.
Presently of Lanka Jathika Estate
Workers Union, Branch Office,
H/01, Kanagaratnam Road,
Nuwara Eliya. (now deceased)

Thailan Pusparaja,
Lanka Jathika Estate Workers Union,
Head Office,
No. 60, Bandaranayaka Pura,
Sri Jayawardanapura Mawatha,
Welikada, Rajagiriya.

Substituted 2nd Defendant-Respondent

3. General Secretray,
Lanka Jathika Estate Workers Union,
564/4, Galle Road,
Colombo 3.
Presently of Lanka Jathika Estate
Workers Union, Head Office,
No. 60, Bandaranayaka Pura,
Sri Jayawardanapura Mawatha,
Welikada, Rajagiriya.

4. District Secretary,
Nuwara Eliya District Development
Office,
Kachcheri,
Nuwara Eliya.

3rd and 4th Defendants-Respondent

Before: M.M.A. Gaffoor J.

Janak De Silva J.

Counsel: P.Peramunegama with Ranga Pieris for Plaintiff-Appellant

Sunil Abeyratne with T. Gunatilake for 1st and 2nd Substituted Defendants-Respondents
and 3rd Defendant-Respondent

Written Submissions tendered on:

Plaintiff-Appellant on 8th December 2017

1st and 2nd Substituted Defendants-Respondents and 3rd Defendant-Respondent on 8th December 2017

Argued on: 25th October 2017

Decided on: 14th May 2018

Janak De Silva J.

The Plaintiff-Appellant (Appellant) filed the above action in the District Court of Nuwara Eliya claiming that he was the tenant of the premises described in the schedule to the plaint and that he was unlawfully evicted by the 1st, 2nd and 3rd Defendants. He prayed for a declaration that he is the tenant of the said premises, ejection of the 1st and 2nd Defendants from the said premises, grant of vacant possession and damages.

The 1st, 2nd and 3rd Defendants denied that the Appellant was a tenant of the premises in dispute. The case advanced by them during the trial was that the said premises belonged to the Ragala Pradeshiya Sabha and that the said premises was used by the Lanka Jathika Estate Workers Union as its Ragala Office and the Appellant was looking after the said office as a member of the said Union.

After trial, the learned Additional District Judge of Nuwara Eliya dismissed the action and hence this appeal by the Appellant.

The learned Additional District Judge concluded that the Appellant had failed to add the owner of the premises in dispute as a party and as such the action was not properly constituted. It was further held that the Appellant had failed to establish that he was a tenant of the premises in dispute.

The Appellant admitted under cross examination that he was a tenant of the Ragala Pradeshiya Sabha [Appeal Brief page 70]. However, he failed to adduce any evidence of a tenancy agreement with the Ragala Pradeshiya Sabha. The receipts he tendered marked as පැ.1, පැ.2 and පැ.3 to establish payment of rent did not have the address of the premises in dispute. Further the said receipts reflect payment made to the Nuwara Eliya Development Council. He admitted that the premises in dispute was used as the Ragala office of the Lanka Jathika Estate Workers Union of which he was a member. In the light of this evidence the learned Additional District Judge of Nuwara Eliya held that the Appellant had failed to add the owner of the premises as a party as well as failing to establish his tenancy.

The learned counsel for the Appellant submitted that the learned Additional District judge failed to appreciate that the case of the Appellant is based on his status as a tenant to the premises in dispute against trespassers which is possible in terms of section 4 of the Prescription Ordinance. This in my view is an erroneous submission of law. Section 4 of the Prescription Ordinance deals with a possessory action. The pleaded case of the Appellant was not a possessory action.

In *Hariette v. Pathmasiri*¹ the Supreme Court was called upon to consider whether a co-owner could sue a trespasser to have his title to an undivided share declared and for ejectment of the trespasser from the whole land. The Court answered this question in the affirmative because the owner of the undivided share has an interest in every part and portion of the land. However, S.N. Silva J. (as he was then) held that:

“As correctly submitted by learned President's Counsel for the Defendant the action being one for declaration of title and possession, the burden was on the Plaintiff to establish his title to the land which was in dispute. The action cannot be decided only on answers to issues 3 and 4 which relate only to aspects of possession, as submitted by counsel for the Appellant. The character and scope of a *rei vindicatio* action which involves the question of title and rights pertaining to ownership is distinct from that of a possessory action. The

¹ (1996) 1 Sri.L.R.358

Plaintiff's action as presently constituted should therefore be dismissed if she fails to establish title and the right to possess the *corpus* pursuant to such ownership.”²

I am of the view that the same reasoning applies to the instant case. The Appellant came to court seeking a declaration that he is the tenant and sought eviction and grant of possession on the basis of such declaration. Issue no. 1 specifically deals with the question of tenancy. Hence, it was incumbent upon him to establish the necessary attributes of tenancy. He failed to do so. Thereafter it is not open for him to plead that his action was a possessory action and that he should be granted relief on that basis.

Rules of natural justice that have been woven into our civil procedural rules gives a defendant the right to know the case against him so that he can plead his case accordingly. Where the pleaded case of a plaintiff is sought to be changed so as to change the character of the action, grave prejudice will be caused to the defendant if the court proceeds to grant relief on the changed character of the action. For example, the defenses available to a defendant in a possessory action differs from one based on tenancy. Court should not place a defendant in jeopardy of not having an opportunity to forward defenses available in law by granting relief on a different basis.

I am of the view that the learned Additional District Judge of Nuwara Eliya was correct in concluding that the Appellant had failed to add the owner of the premises as a party as well as failing to establish his tenancy.

For the foregoing reasons, I see no reason to interfere with the judgement of the learned Additional District Judge of Nuwara Eliya dated 12th August 1997.

² Ibid. page 361

The appeal is dismissed with costs.

Judge of the Court of Appeal

M.M.A. Gaffoor J.

I agree.

Judge of the Court of Appeal