
ROBERT SILVA
V.
GOONEWARDENA AND ANOTHER

COURT OF APPEAL.
WIJEYERATNE, J. AND EDUSSURIYA, J.
CA/LA NO. 200/91.
DC COLOMBO NO. 7478/RE.
NOVEMBER 08, 1991.

Landlord and Tenant – Ejection on the ground of subletting – Misjoinder – Application for Revision and Appeal in respect of same order.

There is no misjoinder in joining the subtenant with the tenant in a suit for ejection on the ground of subletting.

Where an Appellant had made an application for Revision in respect of the same order he has appealed from and the Revision application had been considered on its merits, and dismissed, the appeal cannot be maintained.

Cases referred to:

1. *Ibrahim Saibo v. Mansoor* 54 NLR 271
2. *Perera v. Sarath de Zoysa* 1986 Colombo Appellate Law Reports Vol. 2 p. 256

APPLICATION for leave to appeal from the Order of the District Judge.

F. C. Perera for 1st defendant – appellant – petitioner.

No appearance for plaintiff – respondent.

No appearance for 2nd defendant – respondent.

Cur. adv. vult.

November 15, 1991.

EDUSSURIYA, J.

In this case the Plaintiff/Respondent had sued the 1st Defendant/Petitioner and the 2nd Defendant/Respondent for

ejection on the basis of the subletting of premises No. 87, Dharmapala Place, Welikada, Rajagiriya by the 1st Defendant/Petitioner to the 2nd Defendant/Respondent.

The 1st Defendant/Petitioner and the 2nd Defendant/Respondent had filed answer denying the subletting alleged in the plaint.

Though several issues had been framed at the commencement of the trial the Court had, at the request of the Counsel for the 1st Defendant/Petitioner decided to try the following issues as preliminary issues of law:

5. Is there a misjoinder of parties and causes of action?
6. (a) If issue 5 is answered in the affirmative is the plaintiff's action illegal?
- (b) Should the plaintiff's action be dismissed?

Accordingly both parties had tendered written submissions after which the learned Additional District Judge had made order dated 15th October 1991 answering the said issues in favour of the Plaintiff/Respondent.

The 1st Defendant/Petitioner now seeks leave of this Court to appeal from the said order.

The Counsel for the 1st Defendant/Petitioner has contended that there is a misjoinder of parties and causes of action since the cause of action against the 1st Defendant/Petitioner is based on contract and the cause of action against the 2nd Defendant/Respondent is based on delict and that such a joinder contravenes s. 5, s. 14 and s. 36 of the Civil Procedure Code.

Quite apart from these sections of the Civil Procedure Code it appears to be settled law that a Plaintiff seeking the ejection of a tenant on the ground of subletting can sue the alleged sub-tenant for ejection in the same action and is the view taken by a Bench of five judges in the case of *Ibrahim Saibo vs. Mansoor* (1) which stated as follows:—

“We have now dealt with two courses which a landlord can adopt for the purpose of obtaining possession. First to join the sub-tenant in an action against the tenant and thereby obtain a decree for the ejection of both. Secondly if he has sued the tenant without joining the sub-tenant he can obtain a subsequent order for ejection against him under section 327. A third course is open to him. Where the landlord has sued the tenant without joining the sub-tenant he may sue the latter for ejection in a separate action.”

It was contended on behalf of the Petitioner that a sub-tenant should be added as a party after obtaining leave of Court. However the passage that I have referred to above, from the judgment reported in 54 New Law Reports page 217 does not support that contention. Further if the sub-tenant can be added after obtaining leave of Court I cannot see any reason for not doing so at the very outset: s. 10 (5) of the Rent Act provides for a decree of ejection to be obtained against both the tenant and the sub-tenant in one action.

In any event this same matter came up before us by way of an application for the Revision of the said order of the learned Additional District Judge and this Court after having considered it made a full order dismissing the said application for Revision No. C.A. 959/91.

According to the judgement in the case of *L. K. Perera vs. Tiki - riyadura Sarath de Zoysa* (2) where an Appellant had made an Application for Revision in respect of the same order he has appealed from and the Revision Application had been considered on its merits and dismissed, the appeal cannot be maintained.

Therefore this Court refuses this application for leave to appeal.

WIJEYARATNE, J. — I agree.

Application refused.