

GINADASA
v
DISSANAYAKE

COURT OF APPEAL
FERNANDO , J., AND
EDIRISURIYA, J.
C.A.NO. 1081/93 (F)
D.C.KANDY 11508/X
JULY 15, 2003

Declaration of tenancy – Acts of spoliation – Dispossession of tenant by land-lord without resorting to legal remedies – Consequences – Spoliatus ante omnia restituendus est.

Held:

- (i) "When people commit acts of spoliation by taking the law into their hands, they must not be disappointed, if they find that courts of law take a serious view of the conduct."
- (ii) Before court allows any inquiry into the ultimate rights of parties, the property which is the subject of the act of spoliation must be restored to the person from whom it was taken Irrespective of the question as to who is in law entitled to be in possession of such property.
- (iii) The general maintenance of law and order is of infinitely greater importance than mere rights of particular individuals to recover possession of the property.

APPEAL from the judgment of the District Court of Kandy

Cases referred to:

1. *Greyling v Estate Pretorius* - (1947) - 3 SA 514 (pages 516-517)
2. *Changerpillai v Chelliah* - 5 NLR 270
3. *Sameem v Dep* - 55 NLR 523 at 525

P.P Gunasena for defendant-appellant,
Hemantha Situge for plaintiff-respondent

Cur.adv.vult

September 11, 2003

EDIRISURIYA, J.

The plaintiff in this case is seeking among other things a declaration that he is the tenant of the premises in suit and the ejection of the defendant therefrom. He has also prayed that certain items of furniture be handed back to him. 01

It is common ground that in the year 1963 the aforesaid premises was given on rent to one D.S. Dissanayake. The plaintiff giving evidence has said the landlord of the subject matter of the action is the defendant. He came to the premises in the year 1978 when his father D.A. Dissanayake was the tenant. He and his father have paid rent to the defendant in this case. In proof of this fact he has produced several receipts. He said he carried on the business 10

of furniture and retail items in this premises. In support of this fact he has produced several bank balance sheets. He said when his father died in 1978 he took over the business.

He further said that on 1988-04-06 he kept furniture worth Rs.59,220/- in the shop. Thereafter having closed the shop he went home. On the following day when he went to the shop he found that the defendant had locked the shop by placing two padlocks over the padlock that he kept.

Thereafter he said he met the defendant who had said he would not hand back possession of the premises. He made a statement to the Police on 1988-04-08. 20

The defendant gave evidence to the following effect; He gave the premises in suit in Padiyapelella to one D.S. Dissanayake on 11.09 who ran a furniture house. D.S.Dissanayake started another business in furniture at Hawa Eliya. Thereafter his father D.A.Dissanayake and his brother, the plaintiff carried on the furniture business. D.S.Dissanayake was the plaintiff's elder brother. He said he received rent from D.S.Dissanayake his father and his brother, the plaintiff. The receipts for rent were issued by him, his wife and the brothers. He said in the year 1981 the furniture shop in Padiyapelella was managed by the plaintiff. At that stage he said the shop was bankrupt. As a result the boutique was closed down. 30

He was not paid the rent after 1985 December. He said after 1988 there was no business in the premises and since the rent was also not paid he sent a letter to D.S.Dissanayake reminding him that there were arrears of rent. Thereafter D.S.Dissanayake met him and requested him to take over the shop. Accordingly he put a padlock to premises in suit. Thereafter plaintiff had made a complaint to the Police. The defendant had told the Police that D.S.Dissanayake had handed over the shop to him and till the rents were settled he did not wish to have any transaction with the plaintiff. 40

The plaintiff had attempted to keep some furniture in the shop. He did not allow that to happen. However the plaintiff had kept two chairs in the shop. Thereafter he closed the shop. He said there are some beds, racks and showcases in the shop. Racks and showcases were there from the time D.S. Dissanayake came into the

shop. After D.S.Dissanayake started the business at Hawa Eliya the plaintiff started a retail business as well in the premises.

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D.S.Dissanayake giving evidence said that he did not hand over possession of the premises to the defendant. It is clear that the plaintiff was in possession of the premises in suit at the time the defendant locked the shop with a padlock. D.S.Dissanayake has denied having handed over possession of the shop to the defendant. The learned District Judge having considered the evidence given by both parties has held that the said D.S.Dissanayake had with the consent of the defendant who was the landlord transferred his tenancy to the plaintiff's father. He further had that when the plaintiff's father died the plaintiff succeeded to his father's tenancy rights.

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In my opinion the question that arises for our determination in this case is whether the defendant even though he be the true owner with all rights of ownership vested in him has taken the law into his own hands to recover possession. The question whether the plaintiff is the tenant of the premises in suit is wholly immaterial. In the South African case of *Greyling v Estate Pretorius*, (1) Price, J said at 516 that when people commit acts of spoliation by taking the law into their hands they must not be disappointed if they find that courts of law take a serious view of their conduct. The principle of law is: *Spoliatus ante omnia restituendus est*. If this principle means anything, it means that before the court will allow any enquiry into the ultimate rights of the parties, the property, which is the subject of the act of spoliation must be restored to the person from whom it was taken irrespective of the question as to who is in law entitled to be in possession of such property. The reason for this very drastic and firm rule is plain and obvious. The general maintenance of law and order is of infinitely greater importance than mere rights of particular individuals to recover possession of their property. A liberal attitude to the scope of the possessory action has been adopted in Sri Lanka. In *Changerpillai v Chelliah*,⁽²⁾ Bonser C.J.declared. "The remedy given by such an action is a most beneficial one and it seems to me that the court should not seek to narrow its operation but rather to enlarge it if it can do so consistently with principle." This approach was endorsed by Pulle, J (with Swan, J agreeing) in *Sameem v Dep* ⁽³⁾ at 525.

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I am of the view that the defendant in this case has dispossessed the plaintiff without resorting to legal remedies. After evaluating the evidence the learned District Judge has come to a finding that the plaintiff is entitled to the items of articles referred to in the plaint. I do not wish to interfere with the finding of the learned District Judge on this matter. 90

I am of the view that the aforesaid legal issue enables us to grant the reliefs prayed for in the plaint without deciding the question as to whether the plaintiff is the tenant or not of the premises in suit. In the circumstances I dismiss the appeal with costs.

FERNANDO, J. – I agree.

Appeal dismissed.