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

In the matter of an Appeal from the Judgment of the High Court (Civil Appellate) of the Central Province holden at Kandy in terms of Article 127, 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5(c) of the High Court of the Provinces (Special Provisions) Amendment Act No. 54 of 2006.

S.C. Appeal No:

43/2025

SC/HCCA/LA No:

209/2022

CP/HCCA/190/19 (F)

Kandy District Court

Case No: 2675/05/RE

Jayasundera Mudiyanselage

Jayawardena Manike Jayasundera,

No.18, Kurunegala Road, Nugawela.

PLAINTIFF

Vs.

1. Lalith Jayasundera,

No. 139, Lady Mc Cullum's Road,

Kandy.

2. Sunil Shantha Kulasuriya,

3. Diyunuge Nandadasa Rajapaksha

4. Diyunuge Kulathunga Rajapaksha

5. Diyunuge Ananda Rajapaksha

6. Diyunuge Samson Rajapaksha

7. Rathnalal Nugaliyadde

8. D. Samson and Sons Limited,

No. 64, Dalada Street, Kandy.

DEFENDANTS

AND BETWEEN

Jayasundera Mudiyanselage

Jayawardena Manike Jayasundera,

No. 18, Kurunegala Road, Nugawela.

(Deceased)

Pradeep Chaminda Bandara

Warellagama,

No. 75/33,

Heerassagala Road,

Kandy.

SUBSTITUTED PLAINTIFF-

PETITIONER

Vs.

1. Lalith Jayasundera,

No. 139, Lady Mc Cullum's Road,

Kandy.

2. Sunil Shantha Kulasuriya,

3. Diyunuge Nandadasa Rajapaksha

4. Diyunuge Kulathunga Rajapaksha

5. Diyunuge Ananda Rajapaksha

6. Diyunuge Samson Rajapaksha

7. Rathnalal Nugaliyadde

8. D. Samson and Sons Limited,

No. 64, Dalada Street, Kandy.

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

Pradeep Chaminda Bandara

Warellagama,

No. 75/33, Heerassagala Road,

Kandy.

SUBSTITUTED PLAINTIFF-

PETITIONER-APPELLANT

Vs.

1. Lalith Jayasundera,

No. 139, Lady Mc Cullum's Road,

Kandy.

2. Sunil Shantha Kulasuriya,

3. Diyunuge Nandadasa Rajapaksha

4. Diyunuge Kulathunga Rajapaksha

5. Diyunuge Ananda Rajapaksha

6. Diyunuge Samson Rajapaksha

7. Rathnalal Nugaliyadde

8. D. Samson and Sons Limited,

No. 64, Dalada Street, Kandy.

DEFENDANT-RESPONDENT-

RESPONDENTS

Before **:** P. Padman Surasena, J.

: Janak de Silva, J.

: Sampath B. Abayakoon, J.

Counsel **:** Rohana Sahabandu, P.C. with Chathurika Elvitigala, Sachini Senanayake and Pubudu Weerasuriya for the Substituted Plaintiff-Petitioner-Appellant instructed by Chathurika Elvitigala.

: S.N. Vijithsingh for the 1st Defendant-Respondent-Respondent instructed by Kulatunga.

: Ravi Algama with Randika Mudannayaka for the 2nd to 8th Defendant-Respondent-Respondents instructed by Lakshman Premasiri.

Argued on **:** 25-03-2025

Written Submissions **:** 05-05-2025 (By the Substituted Plaintiff-Petitioner-Appellant)

: 18-06-2025 (By the 1st Defendant-Respondent Respondent

Decided on **:** 23-07-2025

Sampath B. Abayakoon, J.

This is an appeal by the substituted plaintiff-appellant-appellant (hereinafter referred to as the plaintiff-appellant) on being aggrieved of only a part of the appellate judgment pronounced on 07-08-2022, by the learned Judges of the Provincial High Court of the Central Province holden in Kandy while exercising its civil appellate jurisdiction.

The plaintiff-appellant seeks to challenge the part of the judgment where *de novo* trial was ordered by the learned Judges of the High Court after determining the Grounds of Appeal taken up at the hearing of the appeal by the plaintiff-appellant in favour of her.

When this matter was considered for the grant of Leave to Appeal on 25-03-2025, having heard the submissions of the learned Counsel who represented all the parties, this Court decided to grant Leave to Appeal in respect of the questions of law set out in paragraph 22(i) and (ii) of the petition dated 12-08-2022.

The said questions of law read as follows:

1. Whether it is correct for the learned High Court Judge to order a trial *de novo* when the appellate Court has held that the trial Judge was wrong in holding that it is not the 1968 annual value that should be applicable, but 1986 valuation – which was the pivotal issue raised before the trial Judge, where the trial Judge has held that it is the 1968 annual value that is applicable.
2. Whether such decision to order a trial *de novo* is warranted in the given situation.

Since the above two questions of law were discussed extensively at the stage of consideration to grant Leave to Appeal, all Counsel agreed that acting under Rule 16 of the Supreme Court Rules, the matter can be reserved for judgment.

Accordingly, all the parties were allowed to file written submissions as to the questions of law under which the Leave to Appeal was allowed for the consideration of the Court.

The facts that led to the impugned judgment can be summarized in the following manner.

The original plaintiff has instituted this action before the District Court of Kandy against eight defendants seeking to evict the said defendants from the premises morefully described in the schedule of the plaint, on the basis that the 1st defendant being her tenant was in unlawful occupation of the building after the tenancy agreement between them was terminated, and the other defendants are also in unlawful occupation of the same building being sub-tenants of the 1st defendant of the District Court action.

It needs to be noted that the 2nd to 7th defendants were in fact directors of the 8th defendant company, and they have been named as defendants in the District Court action in that capacity only.

At the trial, the fact that the 1st defendant-respondent-respondent (hereinafter referred to as the 1st defendant) was the tenant of the original plaintiff of the action and that the relevant building was a business premises were admitted facts.

The position taken up by the plaintiff had been that the premises given on rent to the 1st defendant underwent extensive structural alterations and its previous character had therefore been changed. It has been her position that, the annual value calculated by the Kandy Municipal Council, which is the relevant Local Government Authority for the year 1986, should be taken as the annual value for the purpose of determining whether the relevant premises would fall within the applicability of the Rent Act as provided for by Regulation 3 of the Schedule to the Rent Act No. 07 of 1972.

The evidence led in this action shows that the stand taken up by the plaintiff at the trial had been that, the premises No.64, Dalada Veediya, Kandy, which is the relevant subject matter of this action, underwent structural changes in accordance with an approved plan, and the Certificate of Conformity in

accordance with the new construction was also granted by the Municipal Council in this regard. It had been the position of the plaintiff that after the said structural changes, the new assessment was conducted by the Municipal Council in the year 1986, which amounts to an annual value over Rs. 4,000/-

It had been contended that since the premises in question would no longer be governed by the provisions of the Rent Act, the plaintiff issued a notice to quit to the 1st defendant, but he failed to hand over the vacant possession of the building.

It appears that the cause of action against the 2nd to 8th defendants have been pleaded as an incidental cause of action to the above, on the basis that the 1st defendant has sub-let the premises to them without the authorization of the landlord.

The position taken up by the 1st defendant at the trial had been that it is the annual value of 1968 that should be considered relevant since the claimed alterations are in fact not structural alterations to the building.

It had been his position that since the relevant annual value is less than Rs. 4,000/- in the year 1968, he falls under the category of a tenant who can claim the protection of the Rent Act. The 1st defendant has claimed that he only entered into an agency agreement with the 8th defendant company of whom the 2nd to 7th defendants are the directors, and he never handed over the possession of the building to the 2nd to 8th defendants. On the said basis, he has sought for the dismissal of the action.

It appears that the position taken up by the 2nd to 8th defendants in their answer before the District Court had been the same. They have taken up the position that they only had a commercial contract with the 1st defendant and they never had the physical possession of the relevant building. The learned Counsel who represented the said defendants at the hearing of the appeal maintained the same position.

As agreed by all the parties at the hearing of this appeal, the question that needs consideration would be whether it should be the annual value calculated for the year 1986 that should be applicable or whether it should

be the annual value calculated for the year 1968 that should be applicable, when considering the applicability of the provisions of the Rent Act to the subject matter of this action.

I am of the view that the answers to all other issues raised before the trial Court would depend on the determination as to the above legal question, under which Leave to Appeal was granted by this Court. This was also an issue raised before the trial Court, as well as during the hearing of the initial appeal before the Provincial High Court of the Central Province holden in Kandy.

The relevant mode of calculation that has been set out in the Schedule of the Rent Act, which defines Regulations as to excepted premises, reads as follows:

SCHEDULE

REGULATIONS AS TO THE EXCEPTED PREMISES

1. **...**

2. **...**

3. **Any business premises (other than premises referred to in regulation 1 or regulation 2) situated in any area specified in Column I hereunder shall be excepted premises for the purposes of this Act if the annual value thereof as specified in the assessment made as business premises for the purpose of any rates levied any local authority under any written law and in force on the first day of January, 1968, or, where the assessment of the annual value thereof as business premises is made for the first time after the first day of January, 1968, the annual value as specified in such assessment, exceeds the amount specified in the correspondence entry in Column II:**

I Area	II Annual Value Rs.
Municipality of Colombo	**6,000**
Municipality of Kandy, Galle or any other Municipality	**4,000**
Town within the meaning of the Urban Councils Ordinance	**2,000**
Town within the meaning of the Town Councils Ordinance	**1,000**

It was not a disputed fact that the premises in question was originally given on rent before 1968 and the annual value as at 01-01-1968 was less than Rs.4,000/-.

The position of the plaintiff had been that since the building underwent extensive structural alterations, an entirely new annual value was calculated based on the said structural alterations. Therefore, for the purposes of the applicability of the Rent Act, the premises has to be considered as a new premises and the applicable calculation should be the assessment taken on the year 1986 for the 1st time after the said renovations.

The mode of considering the existence of a new premises for the purposes of the Rent Act was considered in the judgment of **Wakkumbura Vs. Nandawathie (1982) 2 SLR 154.**

> The respondent was the tenant in respect of three adjacent premises Nos. 81, 83, and 83/1, during the period 1958-1987. The premises were subject to four assessments, twice as three separate units and twice as a single consolidated unit.
>
> The plaintiff-appellant instituted action against the defendant-respondent to have her ejected from the business premises formerly bearing assessment Nos. 83,81 and 83/1, was late amalgamated as assessment No. 81 and it was first assessed as No. 81 in 1983, and the said premises is an excepted premises. The defendant's position was that the first assessment of the premises No-81 as a single unit was in 1970, and therefore, the premises is not an excepted premises.

The District Court held that, the premises is not an excepted premises which was affirmed by the Court of Appeal.

Held:

1. For the purpose of the existence of a new premises it is essential that some kind of physical alteration to the premises was carried out. In a situation where there is a physical alteration to a premises the extent and significance of that physical alteration would certainly have to be taken into consideration.
2. The premises are business premises. The first time the premises were assessed as one unit as business premises after January, 1968, was in 1970. There is no evidence of substantial physical alteration to the building thereafter; in these circumstances, it cannot be said that a new premises has come into existence and therefore, the assessment in 1970 will continue to govern the premises.

In the case of **Hewavitharane Vs. Rathnapala (1988) 1 SLR 240**, it was held:

> *"That the nature of the physical alterations done to the premises is such that the assessment of the October 1975 did not give birth to a new premises, attracting an assessment for the first time and therefore the January 1968 annual value should be applied to determine whether the premises were excepted premises or not."*

It is my considered view that although the above considered judgments are judgments where it was held that the Rent Act would be applicable to the business premises in question depending on the facts relevant to each of those cases, the principles discussed as to the mode of considering the date of the annual value would become relevant in a matter of this nature, and the said question would have to be decided based on facts and circumstances unique to each matter.

It clearly appears from the trial Court judgment pronounced by the learned Additional District Judge of Kandy on 06-05-2019 that, the learned Additional District Judge had correctly identified the primary issue that needs to be decided would be whether the premises mentioned in the schedule of the

plaint should fall under the provisions of the Rent Act, where the tenant can seek its protection or whether the premises would be an excepted premises.

However, I find that when analyzing the evidence and coming into a finding in that regard, the learned Additional District Judge was misdirected as to the relevant facts, and has failed to consider whether the contention of the plaintiff that after the alterations effected to the building, the annual value calculated in 1986 should be considered as the relevant annual value for the purposes of the action.

The learned trial Judge has only considered the annual value calculated on 01-01-1968, which was Rs.1,975/- as shown in the assessment register for the year 1968 (the document marked P46), without considering whether it should be the applicable rate or whether it should be the annual value calculated in year 1986. After having come to a finding in such a manner, the learned Additional District Judge has determined that the basis upon which the plaintiff has come before the Court was that the 1st defendant, being the tenant of the plaintiff, has sub-let the premises to the 2nd to 8th defendants, without the permission of the landlord, contrary to the provisions of the Rent Act.

However, when looking at the plaint, the answers of the defendants before the trial Court and the issues raised by the parties, it is clear that whether the 1st defendant has sub-let the premises to the 8th defendant was only an incidental matter to that of the question whether the premises should be considered as an excepted premises within the meaning of the Rent Act. Therefore, I am of the view that the learned Additional District Judge was misdirected as to the facts and the relevant law when it was determined that the plaintiff has failed to establish that the contract of tenancy has come to an end because of the alleged sub-letting, which has been the reason for the dismissal of the plaintiff's action.

However, when the judgment of the trial Court was appealed against to the Provincial High Court of the Central Province holden in Kandy by the substituted plaintiff-appellant, it clearly appears from the appellate judgment

pronounced by the learned Judges of the High Court on 08-07-2022 that, the relevant legal provision that needs to be considered has been extensively gone into, together with the relevant facts by the learned Judges of the High Court.

It has been determined that the learned Additional District Judge was gravely erred in both facts and law when he proceeded to dismiss the action of the plaintiff based on a totally erroneous finding that it would be the annual value of 01-01-1968 that should be applicable.

After having considered the facts as well as the relevant law, the learned Judges of the High Court have determined that the judgment of the learned Additional District Judge was not a judgment written in compliance with the requirements of section 187 of the Civil Procedure Code where requisites of a judgment have been laid down.

The learned Judges of the High Court have decided to set aside the impugned judgment on the basis that it cannot be considered as a proper judgment in terms of the above section, and had ordered a *de novo* trial.

At the hearing of this appeal, the learned President's Counsel for the plaintiff-appellant strongly contended that there was strong evidence placed before the trial Court to establish that, in fact, the premises in question should fall within the meaning of an excepted premises. It was argued that, it should be the 1986 annual value that becomes relevant in view of the structural alterations done to the building, which has created a situation where it can be termed as a new premises coming into existence.

He brought to the notice of the Court, the evidence where the landlord of the premises had applied to the Municipal Council of Kandy for alterations, additions and improvements of the existing shops belonging to him, including No.64, Dalada Veediya, Kandy, which is the relevant premises in relation to this case. The relevant plans as to the structural alterations and the approval granted by the relevant authorities have also been submitted marked as P33 to P43.

It has been established that after the said construction, the Certificate of Conformity as required by law has been issued by the Municipal Council in the year 1984(the document marked P37).

The assessment register produced in relation to the said premises has clearly established that the annual assessment, which was Rs.1975/- on 01-01-1968, has been drastically changed in the assessment by the Municipal Council for the year 1986 to a sum of Rs. 8470/- (the document marked P57), which establishes the fact that this was a clear result of the structural alterations, additions and improvements made to the said premises.

It is my considered view that there was sufficient evidence placed before the trial Court to establish that fact. Accordingly, I find that it shall be the 1986 annual value that should have been considered for the purpose of determining whether the premises should become an excepted premises for the purposes of the Rent Act.

I find that the learned Judges of the High Court had, in fact, has come to the same finding, which was the reason why the judgment of the learned Additional District Judge has been set aside.

Under the circumstances, I am unable to find any justifiable basis for the learned Judges of the High Court to send the matter for a *de novo* trial on the basis that it was not the duty of an appellate Court to re-write judgments that should have been written by a trial Court.

I find that this is an action instituted by the original plaintiff of her plaint dated 03-11-2005. The High Court judgment has been pronounced on 08-07-2022, some 17 years after the filing of the plaint. Given the time it takes to conclude a civil trial of this nature by way of a *de novo* trial, it is clear that this case may not come to an end in any foreseeable future.

Hence, I am of the view that the decision of the learned Judges of the High Court to order a *de novo* trial cannot be justified in that context as well.

After having considered the evidence before the trial Court and coming to a clear determination as to the pivotal issue that should have been considered by the learned Additional District Judge, I find that this was an instance where a positive appellate judgment could have been pronounced by the learned Judges of the Provincial High Court of the Central Province holden in Kandy, and thereby, bringing this protracted litigation to an end.

I am of the view that this should be the purpose of every appellate judgment, unless it is a situation where there is no option before the Court, but to order a re-trial.

For the reasons as considered above, I am of the view that the appeal preferred by the substituted plaintiff-appellant, in order to challenge only the relevant part of the determination made by the learned Judges of the High Court where a *de novo* trial was ordered, should succeed.

Accordingly, I answer the considered questions of law in the following manner.

1. The learned Judges of the Provincial High Court should not have ordered a *de novo* trial, but a positive appellate judgment.
2. Such a decision was not warranted.

Therefore, I allow the appeal, and set aside the portion of the impugned appellate judgment dated 08-07-2022, where a *de novo* trial has been ordered, and affirm the remainder of the judgment.

I hold that the appellant has established her case before the trial Court on the balance of probabilities and that she is entitled to reliefs as sought for in the plaint.

Accordingly, I direct the learned District Judge of Kandy to enter judgment in favour of the appellant as sought for in the prayer (අ) of the plaint dated 03-11-2005, which reads thus;

> (අ) විත්තිකරුවන් සහ ඔවුන් යටතේ අයිතිවාසිකම් කියන සෑම සියලුදෙනාම මෙහි පහත උපලේඛණ ගත දේපලින් නෙරපා එහි නිරවුල් භුක්තියේ මෙම පැමිණිලිකාරියව පිහිටුවන ලෙසටත්

I hold further that the substituted plaintiff-appellant is entitled to claim costs incurred in the District Court, the Provincial High Court of the Central Province holden in Kandy, and also in this Court, from the 1st defendant-respondent-respondent.

The appeal is allowed.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Janak de Silva, J.

I agree.

Judge of the Supreme Court