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

The Pentecostal Assembly of Sri Lanka,
No. 5, Jubily Road,
Katubedda,
Moratuwa.
Plaintiff

SC APPEAL NO: SC/APPEAL/201/2016
SC LA NO: SC/HCCA/LA/630/2014
HCCA BADULLA NO: UVA/HCCA/BDL/RA/17/2013
DC BANDARAWELA NO: L/1705

Vs.

David Ratnam,
No. 279, Badulla Road,
Bandarawela.
Defendant

AND BETWEEN

The Pentecostal Assembly of Sri Lanka,
No. 5, Jubily Road,
Katubedda,
Moratuwa.
Plaintiff-Appellant

Vs.

David Ratnam,
No. 279, Badulla Road,
Bandarawela.
Defendant-Respondent

AND NOW BETWEEN

David Ratnam,
No. 279, Badulla Road,
Bandarawela.
Defendant-Respondent-Appellant

Vs.

The Pentecostal Assembly of Sri Lanka,
No. 5, Jubily Road,
Katubedda,
Moratuwa.
Plaintiff-Appellant-Respondent

Before: P. Padman Surasena, J.
Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Chathura Galhena with Dharani Weerasinghe for the Defendant-Respondent-Appellant.
S.A. Parathalingam, P.C., with Nishkan Parathalingam and Olivia Thomas for the Plaintiff-Appellant-Respondent.

Argued on : 16.12.2021

Written submissions:

by the Defendant-Respondent-Appellant on 12.05.2017 and 24.01.2022.

by the Plaintiff-Appellant-Respondent on 06.02.2017 and 20.01.2022.

Decided on: 22.05.2023

Samayawardhena, J.

The plaintiff, the Pentecostal Assembly of Sri Lanka, filed this action in the District Court of Bandarawela seeking a declaration of title to the premises described in the schedule to the plaint and ejectment of the defendant therefrom on the basis that the latter was the pastor of the church who has no title or entitlement to remain in possession. The defendant filed answer seeking dismissal of the plaintiff's action. At the trial, it was recorded as an admission that case No. L/1551 instituted previously in respect of the same premises had been dismissed. The only two issues the defendant raised at the trial were:

12. In view of the decision in case No. L/1551, has the Court jurisdiction to hear the case on the principle of *res judicata*?
13. If the answer to that question is in the negative, can the plaintiff maintain this action?

The defendant moved for only issue No. 12 to be tried as a preliminary question of law (මේ අවස්ථාවේදී විත්තිය වෙනුවෙන් නඟන ලද 12 වන විසඳිය යුතු ප්‍රශ්නය නීතිමය විසඳිය යුතු ප්‍රශ්නයක් ලෙස සලකා ලිඛිත සැලකිරීම් මගින් තීරණය කරන ලෙස දෙපාර්ශවය ඉල්ලා සිටී), not both 12 and 13. This is because issue No. 13 is a perfunctory question which has no independent survival. It is intrinsically interwoven with issue No. 12.

Both parties filed written submissions on this point before the District Court. The defendant in his written submissions made it very clear that his objection is based on *res judicata* as contemplated in section 207 of the Civil Procedure Code, saying "*Section 207 and the explanation thereof clearly bars action L/1705 [present action] on the principles of Res Judicata.*"

Section 207 of the Civil Procedure Code upon which the defendant objects to the maintainability of the present action reads as follows: "*All decrees passed by the court shall, subject to appeal, when an appeal is allowed, be final between the parties, and no plaintiff shall hereafter be non-suited.*" This section has no applicability to the facts of the present case where the plaintiff in case No. L/1551 moved to withdraw the action, which is governed by a different section, i.e. section 406 of the Civil Procedure Code. Section 406 deals with the withdrawal and adjustment of an action.

The learned District Judge rightly answered issue No. 12 against the defendant on the basis that case No. L/1551 was not dismissed on the merits but on the withdrawal of the case by the plaintiff due to the rejection of the lists of witnesses and documents of the plaintiff.

If the District Judge answered issue No.12 against the defendant, what he should have done was to fix the case for further trial. However, he did not stop at that. After answering issue No. 12 against the defendant, he *ex mero motu* proceeded to answer issue No. 13 in the negative and dismissed the action of the plaintiff. His position was that although the defendant cannot succeed on the objection of *res judicata*, the plaintiff's action cannot be maintained in view of section 406(2) of the Civil Procedure Code – a position not taken up by the defendant.

On appeal, the High Court of Civil Appeal of Badulla set aside the judgment of the District Court and directed the District Court to proceed with the trial. This appeal by the defendant is against the said judgment.

The finding of the District Judge in my view is unwarranted. We follow the adversarial system of justice and not the inquisitorial system of justice, where the judge is expected to resolve the dispute as it is presented before the judge and not in the way the judge thinks it ought to have been presented before him.

In the Supreme Court case of *Ariyawathie Meemaduma v. Jeewani Budhika Meemaduma* [2011] 1 Sri LR 124 at 134, Amaratunga J. held "*sections 164 and 165 of the Civil Procedure Code and section 165 of the Evidence Ordinance do not require a judge to step in to fill the gaps of a case presented by a party*."

In *Beebi Johara v. Warusavithana* [1998] 3 Sri LR 227, the defendant failed to hand over possession of the premises to the plaintiff who was the owner of the premises after the expiry of the lease. The defendant admitted the lease but pleaded that the premises were governed by the Rent Act and claimed to continue in occupation of the premises as a statutory tenant. The District Court held with the defendant. On appeal, the Court of Appeal accepted that the evidence produced in support of the defendant's claim was inadequate. The Court of Appeal found fault with the District Judge for being inactive at the trial to obtain relevant evidence and ordered retrial facilitating the defendant to lead more evidence. The Supreme Court found this approach of the Court of Appeal to be obnoxious to our system of justice and directed the District Court to enter judgment for the plaintiff. Chief Justice G.P.S. de Silva stated at 231:

In the present case, the burden was clearly on the defendant to establish that his possession of the premises was lawful. For this purpose the defendant relied largely on V1. The Court of Appeal correctly held that V1 was inadequate to establish the case for the defendant. The necessary consequence is that the defence set up at the trial has failed. The plaintiff having discharged the burden that lay upon her, was entitled to judgment. In this view of the matter, the Court of Appeal was in error in making an order for a trial de novo with all the attendant delay and expense. Already 10 years have passed since the institution of the action and, what is more, the defendant has failed to pay rent to the plaintiff since September, 1985.

Finally, I wish to refer to section 134 of the Civil Procedure Code and section 165 of the Evidence Ordinance. [Counsel] for the defendant-respondent relied on section 134 of the Civil Procedure Code in support of the view taken by the Court of Appeal. Section 134 of the Civil Procedure Code no doubt confers on the District Court the power of its own motion to summon any person as a witness to give evidence or to produce any document in his possession. Section 165 of the Evidence Ordinance confers inter alia the power on the Judge to order the production of any document or thing. These are enabling provisions intended to be cautiously and sparingly used in the interests of justice. Neither section 134 of the Civil Procedure Code nor section 165 of the Evidence Ordinance was meant to fill in the gaps in the presentation of its case by a party to the action. While these provisions confer a power upon the court, they do not place a burden upon the court; they do not detract from the adversarial nature of the proceedings before the court.

The District Judge states the term "same matter" in section 406(2) means "same property". This is also not correct. The term "same matter" in the said section means "same cause of action", not "same property". *Vide Gangulwitigama Pannaloka Thero v. Colombo Saranankara Thero and Others* [1983] 1 Sri LR 332 at 345.

On the facts and circumstances of this case, I set aside the finding of the District Judge on the applicability of section 406(2) of the Civil Procedure Code and affirm the finding on the applicability of section 207 of the Civil Procedure Code. I agree with the conclusion of the High Court of Civil Appeal.

The questions of law upon which leave to appeal was granted and the answers thereto are as follows:

Did the Civil Appellate High Court misdirect itself in deciding that the findings of the learned District Judge of Bandarawela and dismissing the action of the respondent by order dated 18.09.2007 is wrongful?

No.

Did the Civil Appellate High Court err in law in deciding that the respondent can maintain the action in terms of section 406(2) of the Civil Procedure Code?

Does not arise.

Did the Civil Appellate High Court misdirect itself in analysing the term "same matter" in section 406(2) of the Civil Procedure Code?

Does not arise.

I dismiss the appeal with costs.

Judge of the Supreme Court

P. Padman Surasena, J.
I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.
I agree.

Judge of the Supreme Court