

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

Kumaradasa Karunanayake
[Deceased]

Horagoda, Telijjawela, Matara

Original-Plaintiff

Vs

Suduweli Kondege Helenis Singho
[Deceased]

No.215, Pallimulla, Matara

Original-Defendant

Between

S. K. Jinadasa Dharmawardene of

Walpola, Matara

Substituted-Defendant-Appellant

S.C.Appeal No.43/2014

S.C.[Spl] LA No.100/12

Civil Appeal Case No.27/93[F]

D.C.Matara Case No.2987/M

Vs.

Srinath Karunanayake

No.32/1, Jason Flats,

Sri Saranankara Road, Dehiwela

Substituted-Plaintiff-Respondent

Now Between

S. K. Jinadasa Dharmawardene of
Walpola, Matara

**Substituted-Defendant-Appellant-
Appellant**

Kaushall Ravinath Kumara Karunayaka
Telijjawilla, Matara

**Substituted-Plaintiff-Respondent-
Respondent**

BEFORE : **B.P.ALUWIHARE PC J.**
UPALY ABEYRATNE J.
K.T.CHITRASIRI J.

COUNSEL : Rasika Dissanayake with C.Wanigapura for the Substituted
Defendant-Appellant-Appellant
Mano Devasagayam with Sujeewa Dahanayake for the
Substituted-Plaintiff-Respondent-Respondent

ARGUED ON : 01.06.2016

WRITTEN 19.08.2016 by the Substituted-Plaintiff

SUBMISSIONS : Respondent-Respondent

ON No submissions filed by the substituted Defendant
Appellant-Appellant

DECIDED ON : 06.10.2016

CHITRASIRI, J.

This matter was argued on 01.06.2016 before this Court and upon
conclusion of the argument both Counsel moved that they be given a chance
to explore a possibility of a settlement of the dispute. Accordingly, the matter

was listed again on 12.07.2016 to ascertain whether there was a settlement. On that date both Counsel moved for a further date to see whether there is a possibility of a settlement. Then the matter was once again mentioned on 25.07.2016 and on that date it was brought to the notice of Court that the parties have failed in arriving at a settlement. Thereafter, both Counsel moved that they be given an opportunity to file submissions in writing in addition to the oral submissions that they have made. Then, the Court directed the parties to file written submissions within a period of one month from 25.07.2016. Accordingly, Counsel for the substituted-plaintiff-respondent-respondent (hereinafter referred to as the respondent) has filed written submissions on 19.08.2016 but the substituted-defendant-appellant-appellant (hereinafter referred to as the appellant) has failed to file written submissions up to now even though more than two months have lapsed from the date that the appellant was permitted to file submissions. Therefore, it is to be noted that the appellant has not filed written submissions as agreed before, despite the fact that the questions of law upon which the leave had been granted are quite different to the questions of law referred to in the petition of appeal.

The plaint in this case was filed as far back as 30.03.1971 by the original plaintiff seeking for an order to transfer and assign half share of the license that was issued to the original plaintiff permitting him to sell foreign liquor at Kotuwegoda, Matara. The said license had been first issued to the father of the original plaintiff in the year 1887. Since then, the license had been

renewed periodically and such renewals had taken place in the names of the successors to the original plaintiff.

On or about the 1st day of September 1964, the original defendant was appointed as a co-licensee to the business due to the ill-health and for other personal difficulties of the original plaintiff. Thereafter, the original plaintiff and the original defendant continued as joint licensees for the said liquor license. On or about 08.04.1968 the deceased plaintiff had discovered that the deceased defendant had procured an alteration to the liquor license by having the name of the deceased original plaintiff deleted from the aforesaid license. Consequently, the deceased original defendant had become the sole licensee of the liquor business in Kotuwegoda, Matara.

Subsequently, it was revealed that the said alteration in the liquor license had been made, upon submitting a document which is dated 30.01.1968. The said document was marked as P10 in evidence. The original plaintiff alleged that the said document marked P10 does not bear his signature. He also alleged that the placing of the signature on that document marked P10 was not an act or deed of the original plaintiff. It is the most important issue that was put in suit before the trial court, becoming it the only question that was to determine in this case. Decision in this case depended on the correctness of the document and the genuineness of the signature alleged to have been placed by the original plaintiff which is found on the said document marked P10.

Learned District Judge had carefully examined this document and also had analyzed & evaluated the evidence particularly the evidence as to the signature alleged to have been placed by the deceased original plaintiff. (Vide pages 268-273 in the appeal brief). Having done so, the learned District Judge decided the case in favour of the plaintiff having granted the reliefs prayed for in the plaint.

Being aggrieved by the aforesaid decision of the learned District Judge, the appellant lodged an appeal addressed to the Court of Appeal. In the Court of Appeal, the issue that was argued was whether or not; the document P10 was obtained by false pretence and/or when the plaintiff had been reduced to a state of intoxication by the defendant and/or when the plaintiff was unable to comprehend the nature of the document which he had signed. Therefore, it is seen that the appeal filed in the Court of Appeal had been argued basically on the issue as to the manner in which the aforesaid document P10 came into existence.

Learned Judge in the Court of Appeal was of the view that it was purely a question of fact. Therefore, she did not incline to interfere with the findings of the trial Judge and dismissed the appeal. I do not see any error as to the way that it was decided by the Court of Appeal. Indeed, when the matter was taken up for hearing in this Court, the appellant did not challenge the aforesaid reasoning of the learned Judge of the Court of Appeal even though the grounds of appeal mentioned in the petition of appeal filed in this Court are

also directed towards the evaluation of evidence led at the trial in the District Court.

When the matter was supported to consider granting of special leave, the learned President's Counsel for the appellant left out the questions of law mentioned in the petition of appeal and has decided to frame two new questions of law. At this stage, it must be noted that the questions of law framed in an appeal may contain facts as well provided those facts that are embodied in the question of law have been led in evidence, allowing the respective parties to cross examine. However, completely new facts cannot be included in a question of law that is to be argued and determined in an appeal.

Framing of questions of law that are to be determined in an appeal had been discussed in the special determination in **Collets Ltd. Vs. Bank of Ceylon. [1982 (2) SLR 514]** In that case, **Sharvananda J** (as he then was) has held as follows:

"1. The "Law" in this context means the General Law and not merely Statute Law.

(a) The proper legal effect of a proved fact is necessarily a question of law. A question of law is to be distinguished from a question of "fact". Questions of law and questions of facts are sometimes difficult to disentangle.

(b) Inferences from the primary facts found are matters of law.

- (c) *The question whether the tribunal has misdirected itself on the law or the facts or misunderstood them or has taken into account irrelevant considerations or has failed to take into account relevant considerations or has reached a conclusion which no reasonable tribunal directing itself properly on law could have reached or that it has gone fundamentally wrong in certain other respects is a question of law. Given the primary facts, the question whether the tribunal rightly exercised its discretion is a question of law.*
- (d) *Whether the evidence is in the legal sense sufficient to support a determination of fact is a question of law.*
- (e) *If in order to arrive at a conclusion on facts it is necessary to construe a document of title or correspondence then the construction of the document or correspondence becomes a question of law.*
- (f) *Every question of legal interpretation which arises after the primary facts have been established is a question of law.*
- (g) *Whether there is or is not evidence to support a finding, is a question of law.*
- (h) *Whether the provisions of a statute apply to the facts; what is the proper interpretation of a statutory provision; what is the scope and effect of such provision are all questions of law.*
- (i) *Whether the evidence had been properly admitted or excluded or there is misdirection as to the burden of proof are all questions of law.*

2. "The Substantial Question of Law"

It is not enough if a mere question of law is involved, it must be a substantial one. Whether a particular question of law is substantial or not must depend on the circumstances of each case. No absolute or exhaustive definition or test of "substantial" question, of law can be formulated. All that this Court can do is to set down some guidelines for its ascertainment."

As mentioned in the aforesaid determination, questions of law may contain facts as well. However, it must be mentioned that totally new material other than a pure question of law cannot be argued in an appeal. If fresh evidence need to be considered in an appeal, there is provision in the Civil Procedure Code for such an application. The two questions of law upon which the special leave was granted in this case are as follows:

- (1) *Whether the Court of Appeal and the District Court erred in law granting reliefs as prayed for in paragraphs A, B and C of the prayer in the Plaint in view of the fact that the annual liquor license lapsed on 31.12.1968?*
- (2) *In any event whether the Court has jurisdiction to grant damages beyond a period of one year?*

On the face of the two questions of law referred to above, it is clear that those two questions contain issues mixed with facts as well. Those facts relate to the lapse of the liquor license put in suit. Question as to the lapse of the said license issued to the deceased original plaintiff had never been an issue at the trial court. Neither had an issue been raised at the trial in that regard. The second question of law referred to above relates to the validity of the liquor license issued for the periods subsequent to the year 1968. Admittedly, no issue had been framed at the trial in that connection. Therefore, the facts contained in the two questions of law framed in this Court had never been agitated or raised in the District Court.

In the circumstances, this Court is not in a position consider those fresh material at this appeal stage to determine this appeal. No application had been made in terms of Section 773 of the Civil Procedure Code to admit fresh evidence either. Moreover, no question of law had been framed on the material argued before the trial judge. Indeed, when looking at the two questions of law mentioned above, the opinion one would infer is akin to non-filing of an appeal to canvass the decision of the Court of Appeal. Under such circumstances, the judgment of the Court Appeal shall remain intact.

Accordingly, this appeal is dismissed without costs.

JUDGE OF THE SUPREME COURT

B.P.ALUWIHARE, PC J.

I agree

JUDGE OF THE SUPREME COURT

UPALY ABEYRATNE J.

I agree

JUDGE OF THE SUPREME COURT