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

1. Ambawatta Hewage Sisira Kumara,
2. Habaraduwa Pandigamage Mallika,
3. Ambawatta Hewage Chamila Kumari,
   All of
   'Athkam Niwasa',
   Juwanpullegewatta,
   Petiyagoda,
   Kelaniya.
   Plaintiffs

SC APPEAL NO: SC/APPEAL/138/2016
SC LA NO: SC/HCCA/LA/176/2015
HCCA GALLE NO: SP/HCCA/GA/47/2009 (F)
DC GALLE CASE NO: 15250/L

Vs.

1. Ambawatta Hewage Dayliya Kanthi,
2. Buluwa Hewage Ratnasiri,
   Both of
   No. 5, Melagoda,
   Wanchawala,
   Galle.
   Defendants

AND BETWEEN

1. Ambawatta Hewage Sisira Kumara,
2. Habaraduwa Pandigamage Mallika,
3. Ambawatta Hewage Chamila Kumari,

All of
'Athkam Niwasa',
Juwanpullegewatta,
Petiyagoda,
Kelaniya.
Plaintiff-Appellants

Vs.

1. Ambawatta Hewage Dayliya Kanthi,
2. Buluwa Hewage Ratnasiri,

Both of
No. 5, Melagoda,
Wanchawala,
Galle.
Defendant-Respondents

AND NOW BETWEEN

1. Ambawatta Hewage Sisira Kumara,

2. Habaraduwa Pandigamage Mallika,
3. Ambawatta Hewage Chamila Kumari,
All of
'Athkam Niwasa',
Juwanpullegewatta,
Petiyagoda,
Kelaniya.
Plaintiff-Appellant-Appellants

Vs.

1. Ambawatta Hewage Dayliya Kanthi,
2. Buluwa Hewage Ratnasiri,
Both of
No. 5, Melagoda,
Wanchawala,
Galle.
Defendant-Respondent-Respondents

Before: P. Padman Surasena, J.
K.K. Wickramasinghe, J.
Mahinda Samayawardhena, J.

Counsel: Dr. Sunil Coorey with Sudarshani Coorey for the Plaintiff-Appellant-Appellants.

Defendant-Respondent-Respondents absent and unrepresented.

Argued on: 27.04.2021

Written submissions:

by the Plaintiff-Appellant-Appellants on 16.12.2016

Decided on: 10.06.2021

Mahinda Samayawardhena, J.

The three Plaintiffs filed this action in the District Court of Galle seeking a declaration of title to the land described in the schedule to the plaint, ejectment of the two Defendants therefrom, and damages. The Defendants filed a joint answer seeking dismissal of the Plaintiffs' action, a declaration that they are the owners of the land, and damages.

At the trial, admissions were recorded, and issues were raised and the case was re-fixed for further trial. The Defendants were not ready on the date of further trial and the trial was postponed. On the next date, the Defendants were absent and their Attorney-at-Law informed Court that she had no instructions. The Court fixed the case for *ex parte* trial against the Defendants.

At the *ex parte* trial, the evidence of the 1st Plaintiff was led by a President's Counsel and documents P1-P7 were marked. The learned District Judge did not ask a single question from the witness nor was any clarification sought from Counsel for the Plaintiffs. The *ex parte* Judgment was postponed. By the *ex parte* Judgment delivered on 24.04.2009, the District

Judge dismissed the Plaintiffs' action on the basis that the Plaintiff failed to identify the corpus.

On appeal, the High Court of Civil Appeal affirmed the Judgment of the District Court. Hence the Plaintiffs before the final Court.

This Court granted leave to appeal on the question whether the High Court erred in law when it held that the corpus had not been identified in view of the unique facts of this case.

In my view, this question of law shall be answered in the affirmative and the appeal shall be allowed. Let me explain.

The parties to this action are members of the same family. They are not strangers to one another. The land in suit, which was their mother's property, is described in the schedule to the plaint.

The Defendants *inter alia* in paragraphs 2 and 15 of the answer admitted the corpus and, in the prayer to the answer, sought a declaration of title to the corpus in their favour. Furthermore, at the trial, by way of a formal admission recorded as admission No. 2, the corpus was admitted. In terms of section 58 of the Evidence Ordinance, admitted facts need not be proved unless "*the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions*." But in this case, the Court did not require the corpus to be proved or properly identified despite its admission by the Defendants.

Obviously, no issue was raised at the trial on the identification of the corpus. Both the Plaintiffs and the Defendants raised issues on the premise that the corpus was

admitted. For instance, issue No. 26 raised by the Defendants is: "*Have the Defendants acquired prescriptive title to this land and the house?*" Be it noted that the Defendants speak of "this land". Then what is this fuss about non-identification of the corpus?

What the learned District Judge states in essence is that although the land is described by a Lot number in the schedule to the plaint, the Plan number is not mentioned and therefore the land has not been properly identified. This is an omission on the part of the Plaintiffs' Attorney-at-Law. What is typed in the schedule to the plaint as the subject matter of the dispute is the land described in the schedules to the deeds, which are all pleaded and produced in evidence. The Plan number is mentioned in the schedules to all these deeds.

The Plaintiffs filed this action seeking a declaration of title and ejectment of the Defendants from the entire land described in the schedule to the plaint, not from a portion of it. The Defendants' counter claim is also for the entire land. There is no ambiguity whatsoever as to the identification of the corpus by the Defendants against whom this action has been filed.

The system of justice we practice is adversarial as opposed to inquisitorial, and therefore, the Judge shall decide the case as it is presented before him by the two contesting parties and not in the way the Judge prefers it to have been presented before him.

In the Supreme Court case of *Saravanamuthu v. Packiyam [2012] 1 Sri LR 298*, the Plaintiff instituted the action in the District Court against the Defendants for a declaration of title

to the land described in the schedule to the plaint, ejectment of the Defendants therefrom, and damages. The Defendants in their answer admitted their residence and the situation of the land as averred in the plaint but denied the Plaintiff's claim. In the answer, they stated that the land is the same as that described in the schedule to the plaint, but described the land in the answer according to their deed. After trial, the District Court entered Judgment for the Plaintiff. On appeal, the High Court of Civil Appeal ordered a re-trial on the basis that Counsel for both parties had failed to draw the attention of Court to the discrepancy between the schedules to the plaint and the answer.

On appeal to this Court, Sripavan J. (later C.J.), whilst stating at page 301 "*It must be remembered that the jurisdiction of the Court is limited to the dispute presented for adjudication by the contesting parties*", held at page 302 that "*In view of the specific admission made by the Respondents in paragraph 4 of the answer there was no dispute amongst the parties as to the identification of the corpus even though the corpus is described differently in the answer. It is observed that no issue was raised before the District Court as to the identity of the corpus. The High Court sought to deal with the point that had not been an issue before the learned District Judge.*" The appeal was allowed and the Judgment of the District Court was restored.

Although the trial in the instant action was taken up *ex parte* against the Defendants, without purging the default, the Defendants were allowed to participate at the argument before the High Court, as in an appeal filed against a Judgment entered *inter partes*.

It is unfortunate that the High Court of Civil Appeal affirmed the Judgment of the District Court and dismissed the appeal with costs.

The learned High Court Judge attempts to justify the conclusion of the District Judge in a perplexing manner. He states:

> *The Plaintiffs have produced title deeds for the land described in the plaint. It is also correct that both parties have admitted the land described in the schedule to the plaint as the subject matter of this action. The subject matter means the land for which the dispute arose between the Plaintiffs and the Defendants. The Defendants admitted that the dispute arose for the land described in the plaint. However, there is no proof that the defined lot 1 of lot D mentioned in the title deeds of the Plaintiffs is the portion of land where the dispute arose between the Plaintiffs and the Defendants. Hence it is essential to depict the land for which the Plaintiffs seek a declaration of title.*

The learned High Court Judge states there is no proof that the defined Lot 1 of Lot D mentioned in the title deeds of the Plaintiffs is the portion of land in respect of which the dispute arose between the Plaintiffs and the Defendants. In the schedule to the plaint, the land is described as the defined Lot 1 of Lot D. The High Court Judge acknowledges that the Defendants admit that the dispute arose in respect of the land described in the plaint. I fail to understand this line of thinking of the learned High Court Judge.

Litigation is not wordplay, nor is it a game to be won by the cleverer or more astute. It is a far more serious contest authorised by law, in a court of justice, for the purpose of enforcing a right.

Unless the matter goes to the root of the case, cases need not be dismissed on flimsy technical grounds.

In *Silva v. Selohamy (1923) 25 NLR 113*, decided nearly a century ago, Schneider J. remarked at 114: "*It is not the policy of the Civil Procedure Code to throw out applications for relief for defect in pleadings. On the contrary, its policy would appear to be otherwise.*"

The High Court relied upon *Latheef v. Mansoor [2010] 2 Sri LR 333* to dismiss the appeal which reaffirmed the established principal that – be it *rei vindicatio* or partition – if the corpus cannot be identified, the action cannot be maintained. There is no question about the legal principal expounded in *Latheef's* case but the issue lies in the applicability of this principal to this case where the facts are totally different.

In *Latheef's* case, there was a real dispute in the identification of the corpus. There was no admission recorded as to the corpus and the 1st to 5th issues raised at the trial revealed that there was a dispute regarding the identity of the corpus. The Court then issued not one but two commissions to different surveyors to identify the corpus. After the return of the commissions, the 6th issue was raised putting the identification of the corpus in issue. The identity of the corpus was so complex that this Court dedicated 12 pages in the Judgment (pages 378-390) to deal with this question. In the instant action there is no such issue.

A principle laid down in a case shall be understood in the context of the peculiar facts and circumstances of that particular case. Such principles have no universal application unless the facts and circumstances in both cases are on all fours.

In the House of Lords decision of *Quinn v. Leathem [1901] AC 495*, the question arose on the applicability of the former decision of the same House in *Allen v. Flood [1898] AC 1*, which, if boldly applied, the Plaintiff had no case. "*If upon these facts so found the Plaintiff could have no remedy against those who had thus injured him*," Lord Halsbury remarked, "*it could hardly be said that our jurisprudence was that of a civilized community, nor indeed do I understand that any one has doubted that, before the decision in Allen v. Flood in this House, such fact would have established a cause of action against the Defendants*."

Lord Halsbury emphasised at page 506:

> *[E]very judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.*

I set aside the Judgment of the High Court of Civil Appeal and the Judgment of the District Court and direct the learned District Judge to enter *ex parte* Judgment as prayed for in the prayer to the plaint on the uncontroverted evidence led at the trial.

The Plaintiffs are entitled to costs in all three Courts.

Judge of the Supreme Court

P. Padman Surasena, J.
I agree.

Judge of the Supreme Court

K.K. Wickramasinghe, J.
I agree.

Judge of the Supreme Court