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

SC. Appeal No. 55/2015

In the matter of an Application for Leave to Appeal against the Judgment dated 2014/11/05 delivered by the Civil Appellate High Court of the Western Province holden in Avissawella.

SC (HCCA)/LA/656/2014

WP/HCCA/AV/802/08 (F)

District Court of Pugoda 759/L

Piscal Kankanamalage Don Alfred Victor

Plaintiff-Appellant-Appellant

Vs.

01 Nekath Gamlath Ralalage Disa Nona

02 Maalimage Don Jayantha Pushpakumara

03 Maalimage Don Nishantha Pushpakumara

04 Maalimage Achala Shiromi

All of 277/A, Kusalawatta, Udakanampella, Pugoda.

05 Udage Arachchige Sarath Gamini of Pelpita, Pugoda

Defendants-Respondents-

Respondents

BEFORE : Sisira J De Abrew J

Ani Gooneratne J

Prasnna Jayawardena PC J

COUNSEL : C Sooriyaarchchi with C Ratnayaka for the Plaintiff-Appellants-Appellant

Kamal Suneth Perera for the Defendant-Respondent-Respondents.

Written Submissions of the Appellants filed on : 31/03/2015

Written Submissions of the Respondents filed on : 30/01/2015

ARGUED ON : 2.12.2016.

DECIDED ON : 15.2.2017

SISIRA J.DE ABREW J.

This is an appeal against the judgment of the Civil Appellate High Court wherein Judges of the said High Court affirmed the judgment of the learned

District Judge dated 3.8.2007. This court by its order dated 16.3.2015, granted leave to appeal on the following question of law.

"Did the High Court and the District Court err in law when prayer (b) of the Plaint was not granted on 3.8.2017 when deed No.1014 was produced in evidence?"

Facts of this case may be briefly summarized as follows.

Plaintiff-Appellant-Appellant (hereinafter referred to as the Plaintiff-Appellant) instituted action in the District Court of Pugoda against the Defendant-Respondent-Respondents (hereinafter referred to as the Defendant-Respondents) seeking a declaration (i) that deed No.1948 dated 2.6.1996 attested by Romesh Samarakkody Notary Public is a forged and invalid deed and (ii) that deed No.1014 dated 29.12.1994 attested by I M Wimalasena Notary Public is a valid deed. The Defendant-Respondents filed their answer. Both parties also raised issues. But the case was fixed for ex-parte trial as the Attorney-at-Law for the Defendant-Respondents informed court that he had not received instructions from his clients. At the ex-parte trial only the Plaintiff-Appellant gave evidence and closed his case. The learned District Judge by his judgment 3.8.2007, dismissed the case of the Plaintiff-Appellant. At the ex-parte trial the Plaintiff-Appellant did not produce the deed No.1948 referred to above although he challenged the validity of the said deed. The learned District Judge therefore dismissed the case of the Plaintiff-Appellant.

Learned counsel the Plaintiff-Appellant contended that the learned District Judge fell into grave error when he did not grant the prayer (b) of the Plaint. The Plaintiff-Appellant in prayer (b) of the Plaint, sought a declaration that the deed No.1014 was a valid deed. The deed was produced as P1 at the ex-parte trial. The deed No.1014 attested by I M Wimalasena was executed by the Registrar of the

District Court of Gampaha in compliance with the judgment and subsequent order of the District Court of Gampaha in case 33995/Money. A perusal of the said deed reveals that the official frank of the Registrar District Court Gampaha has been placed on deed No.1014. On the face of the said deed there do not appear to be any reasons to reject it. The contention of the Defendant-Respondents is that the Plaintiff-Appellant had failed to take steps in terms of Section 68 of the Evidence Ordinance to prove the said deed.

In Bandaranayake Vs Times of Ceylon [1995] 1SLR 22 this court held as follows:

> "Even in an ex parte trial, the judge must act according to law and ensure that the relief claimed is due in fact and in law, and must dismiss the plaintiff's claim if he is not entitled to it. An ex parte judgment cannot be entered without a hearing and an adjudication."

The most important question that must be decided is whether the learned District Judge considered prayer (b) of the Plaint. I now advert to this question. The learned District Judge at the beginning of his judgment states as follows: "The Plaintiff has filed this case to get a declaration that the deed No.1948 dated 2.6.1996 a forged deed." The learned District Judge has not stated, in his judgment, that the Plaintiff also seeks a declaration to the effect that deed No 1014 dated 29.12.1994 attested by IM Wimalasena is a valid deed. The learned District Judge has not given any decision with regard to the prayer (b) of the Plaint. On perusal of the judgment it appears that the learned District Judge has not at all considered the prayer (b) of the Plaint.

When I consider all the above matters, I am of the opinion that the learned District Judge was wrong when he failed to consider prayer (b) of the Plaint.

Therefore the judgment of the learned District Judge is wrong and cannot be permitted to stand. The learned Judges of the High Court have, by their judgment dated 5.11.2014, affirmed the judgment of the learned District Judge. Since the judgment of the learned District Judge is wrong, the judgment of the High Court too cannot be permitted to stand. For the above reasons, I set aside the judgment of the learned District Judge dated 3.8.2007, and the judgment of the High Court dated 5.11.2014 and direct the learned District Judge to rehear the ex-parte trial. For the above reasons, I answer the above question of law in the affirmative.

Judgments set aside.

Judge of the Supreme Court

Anil Gooneratne J

I agree.

Judge of the Supreme Court

Prasanna Jayawardena J

I agree.

Judge of the Supreme Court