

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

Film Locations (Private Limited)
No. 282/6, Kotte Road,
Nugegoda.
Plaintiff

SC APPEAL NO: SC/APPEAL/133/2015

SCLA NO: SC/HCCA/LA/491/2014

HC COLOMBO NO: WP/HCCA/COL/157/2012/LA

DC COLOMBO NO: 7461/SPL

Vs.

1. Sri Lanka Mahaweli Authority,
No. 500, T.B. Jayah Mawatha,
Colombo 10.
 2. M. Sirisena,
Resident Project Manager,
Victoria Office,
Digana.
 3. Taprobane Studio Ranch
(Private) Limited,
No 282/6,
Kotte Road,
Nugegoda.
- Defendants

AND BETWEEN

Sri Lanka Mahaweli Authority,
No. 500, T.B. Jayah Mawatha,
Colombo 10.

1st Defendant-Petitioner

Vs.

Film Locations (Private Limited)
No. 282/6, Kotte Road,
Nugegoda.

Plaintiff-Respondent

M. Sirisena,
Resident Project Manager,
Victoria Office,
Digana.

2nd Defendant-Respondent

Taprobane Studio Ranch
(Private) Limited,
No 282/6, Kotte Road,
Nugegoda.

3rd Defendant-Respondent

AND NOW BETWEEN

Film Locations (Private Limited)
No. 282/6, Kotte Road,
Nugegoda.

Plaintiff-Respondent-Petitioner

Vs.

Sri Lanka Mahaweli Authority,
No. 500, T.B. Jayah Mawatha,
Colombo 10.

1st Defendant-Petitioner-Respondent

M. Sirisena,
Resident Project Manager,
Victoria Office,
Digana.

2nd Defendant-Respondent-Respondent

Taprobane Studio Ranch
(Private) Limited,
No 282/6, Kotte Road,
Nugegoda.

3rd Defendant-Respondent-Respondent

Before: P. Padman Surasena, J.

Kumudini Wickramasinghe, J.

Mahinda Samayawardhena, J.

Counsel: Thisath Wijayagunawardane, P.C., with Gihan Liyanage
and Sharan Reeves for the Plaintiff-Respondent-Petitioner.
Pulasthi Rupasinghe and Lakna Kularatne for the 1st
Defendant-Petitioner-Respondent and 2nd Defendant-
Respondent-Respondent.

Argued on: 01.11.2021

Written submissions:

By the 1st Defendant-Petitioner-Respondent on 22.11.2021

By the Plaintiff-Respondent-Petitioner on 22.11.2021

Decided on: 21.11.2022

Mahinda Samayawardhena, J.

The plaintiff instituted this action against the three defendants in the District Court of Colombo seeking the following reliefs in the prayer to the plaint.

- (a) To enter a Judgment and a decree that the 1st Respondent is bound by law to act in terms of expressed and/or implied terms of the Agreement marked "A" with the Plaintiff and/or that the 1st Respondent is not entitled in law to breach the conditions in the said Agreement.*
- (b) A declaration that the 3rd Respondent is entitled to uninterrupted possession of the lands described in the 1st and 2nd Schedules to the Plaintiff.*
- (c) To enter a Judgment and a decree that the 1st and 2nd Defendants are not entitled to obstruct and/or interfere with the uninterrupted possession of the 3rd Defendant of the lands morefully described in the 1st and 2nd schedules to the Plaintiff.*
- (d) A permanent injunction preventing the 1st and 2nd Defendants from obstructing and/or interfering with the uninterrupted possession of the 3rd Defendant of the lands morefully described in the 1st and 2nd schedules to the Plaintiff.*
- (e) An interim injunction preventing the 1st and 2nd Respondents from obstructing and/or interfering with the uninterrupted possession of the 3rd Respondent of the lands morefully described in the 1st and 2nd Schedule to the Plaintiff.*

The 1st and 2nd defendants filed answer seeking dismissal of the action. By paragraphs 1 and 2 of the answer, they took up a preliminary objection to the maintainability of the action on the basis that: the plaintiff had not disclosed a cause of action against the 1st and 2nd defendants; if at all a cause of action had been disclosed, it had accrued

to the 3rd defendant and not to the plaintiff, and since the 3rd defendant being an incorporated company is a separate legal entity that can sue and be sued in the eyes of the law, the plaintiff cannot file this action on behalf of the 3rd defendant; therefore the plaint is defective on misjoinder of parties.

The 3rd defendant did not file answer. When the case was called for settlement of issues as part of the trial, the 3rd defendant was discharged on the application of learned counsel for the plaintiff. The reference in the issues to the 3rd defendant was changed to the name of the 3rd defendant – Taprobane Studios Ranch (Private) Ltd.

Thereafter, learned counsel for the 1st and 2nd defendants had taken up a preliminary objection to the maintainability of the action as presently constituted on the basis that no cause of action survives for the plaintiff to continue with the action upon discharging the 3rd defendant from the case. The District Court overruled this objection and, on appeal, the High Court of Civil Appeal upheld the objection and dismissed the action. The plaintiff is before this Court against the judgment of the High Court. This Court has granted leave to appeal against the judgment of the High Court on the following questions of law as formulated by the plaintiff.

- I. *Did the Learned High Court Judges err in law holding that no cause of action survives for the Petitioner to proceed with the said case after the 3rd Respondent was discharged from the proceedings?*
- II. *Did Learned High Court Judges err in law in holding that the Petitioner has not sought reliefs for itself, and all reliefs prayed for in the Plaint are in favour of the 3rd Respondent and hence the Petitioner cannot maintain the said action?*
- III. *Was the Petitioner entitled to have and maintain the said action against the 1st Respondent without the 3rd Respondent being a party as the Petitioner had filed the said action to exercise its rights under*

the said Memorandum of Understanding and to enforce the said legal obligation of the 1st Respondent to keep peaceful possession of the said property with the 3rd Respondent?

IV. In view of the provisions of sections 17, 18 and 22 of the Civil Procedure Code, did the Learned High Court Judges err in law in upholding the said objection and allowing the said appeal?

As seen from the proceedings of the District Court dated 09.07.2009, the plaintiff has raised 7 issues. Those seven issues are as follows:

- 1) පැමිණිල්ල සමඟ A ලෙස ලකුණු කර ඇති ගිවිසුම මගින් සහ පැමිණිල්ල සමඟ ඩී1 වශයෙන් ලකුණු කර ඇති අංක 410 සහ ඩී2 වශයෙන් ඇති අංක 411 දරණ පිඹුරුවල දක්වා ඇති සම්පූර්ණ දේපල 3 විත්තිකාර සමාගමට සින්තක්කරයේ පවරා දීමටත්, එහි නිරවුල් සන්නකය සහ බුක්තිය 3 විත්තිකාර සමාගමට ලබාදීමටත් 1 වන විත්තිකාර අධිකාරිය එකඟවී සහ හෝ ගිවිසගෙන ඇත්ද?
- 2) (a) 1 වන විත්තිකරු පැමිණිල්ලේ සඳහන් පරිදි එකී ගිවිසුමට අනුව කටයුතු කරමින් එකී 410 සහ 411 දරණ පිඹුරුවල දක්වා ඇති අක්කර 10 විශාල භූමියෙහි හිස් සහ නිරවුල් සන්නකය එම ගිවිසුම අත්සන් කල වහාම නැප්‍රෝබේන් ස්ටුඩියෝ ලැන්ඩ් ප්‍රයිවෙට් ලිමිටඩ් සමාගම විසින් අවුරුදු 12කට අධික කාලයක් නිරවුල් ලෙස එම දේපල භුක්ති විඳින්නේද?
- 2) (b) ඒ අනුව එම ගිවිසුම මගින් පැමිණිල්ලේ උපලේඛනයේ සඳහන් අක්කර 10ක් විශාල බිම් ප්‍රමාණය නැප්‍රෝබේන් ස්ටුඩියෝ ලැන්ඩ් ප්‍රයිවෙට් ලිමිටඩ් සමාගමට පවරා දීමටද එහි හිස් සහ නිරවුල් සන්නකය බාරදීමටද 1 විත්තිකාර සමාගම එකඟ නොවූ බව ප්‍රකාශ කර සිටීමෙන් 1 විත්තිකාර සමාගම නීතියෙන් ප්‍රතිබන්ධනයවී ඇත්ද?
- 3) පැමිණිලිකරු සහ 1 විත්තිකරු අතර ඇති කරගත් එකී විරෝධතා ගිවිසුමට නැප්‍රෝබේන් ස්ටුඩියෝ ලැන්ඩ් ප්‍රයිවෙට් ලිමිටඩ් යන සමාගමේ කටයුතු මේ වනතෙක් ක්‍රියාත්මකව සහ හෝ වලංගුව පවතින්නේද?
- 4) එසේ නිබියදී 1 විත්තිකරු සහ හෝ 1 විත්තිකරුගේ සේවකයෙකු සහ හෝ නියෝජිතයෙකු වන 2 විත්තිකරු එක්ව සහ වංක සහයෝගයෙන් සහ හෝ අසන්භාවයෙන් කටයුතු කරමින් ද්වේශ සහගත ලෙසත්, සහ හෝ

නීතිවිරෝධී ලෙසත් සහ හෝ එකී ගිවිසුමේ ප්‍රකාශිතව සහ හෝ ව්‍යංග කොන්දේසිවලට පටහැනි ලෙසත්, පැමිණිල්ලේ උපලේඛනයේ සඳහන් එකී අංක 410 සහ 411 දරණ පිඹුරුවල දැක්වෙන දේපලෙහි 3 විත්තිකරුගේ එකී තැප්‍රෝබේන් ස්ටුඩියෝ ලැන්ඩ් ප්‍රයිවෙට් ලිමිටඩ් යන සමාගමේ නිත්‍යානුකූල භුක්තිය සහ හෝ සන්නකයට බාධා සහ හෝ අවහිර කිරීමට පටන් ගත්තේද?

- 5) එකී ගිවිසුමේ ප්‍රකාශන සහ ව්‍යාජ කොන්දේසි ප්‍රකාරව තැප්‍රෝබේන් ස්ටුඩියෝ ලැන්ඩ් ප්‍රයිවෙට් ලිමිටඩ් යන සමාගම 410 සහ 411 දරණ පිඹුරුවල දක්වා ඇති සම්පූර්ණ දේපලෙහි නිරවුල් බුක්තිය සහ හෝ සන්නකය දැරීමට නිත්‍යානුකූල හිමිකම් සතුද සහ හෝ එකී සමාගමට එම දේපලේ නිරවුල් බුක්තිය සහ හෝ සන්නකය දැරීමට ඉඩදීමට 1 විත්තිකරු නීතියෙන් බැඳී ඇත්ද සහ හෝ එම සමාගමේ එම දේපලෙහි නිරවුල් බුක්තියට බාධා සහ හෝ අවහිර සිදු කිරීමට සහ හෝ 2 විත්තිකරුවන්ට නීතිමය හිමිකම් නොමැතිද?
- 6) එම දේපලෙහි එකී තැප්‍රෝබේන් ස්ටුඩියෝ ලැන්ඩ් ප්‍රයිවෙට් ලිමිටඩ් යන සමාගමේ නිරවුල් බුක්තිය සහ හෝ සන්නකයට බාධා සහ හෝ අවහිර සිදුකිරීම වළක්වාලීමට සහ හෝ එසේ 1 විත්තිකරු විසින් එම ගිවිසුමේ කොන්දේසි උල්ලංඝනය කිරීම වළක්වාලීමට එම සමාගමේ කළමනාකරණ අධ්‍යක්ෂ සහ එකී සමාගමේ ප්‍රධාන කොටස් හිමියා වන මෙම පැමිණිලිකාර සමාගම නීතියෙන් හිමිකම් ඇත්ද?
- 7) ඉහත විසඳිය යුතු ප්‍රශ්න එකක් හෝ වැඩි ගණනකට හෝ සියල්ලම පැමිණිලිකරුගේ වාසියට පිළිතුරු ලැබෙන්නේ නම් පැමිණිල්ලේ ඉල්ලා ඇති සහන ලබා ගැනීමට පැමිණිලිකරුට හිමිකම් ඇත්ද?

It is clear that issue Nos. 1-6 are issues raised by the plaintiff on behalf of the 3rd defendant. In other words, the answers to these issues – whether in the affirmative or in the negative – will affect the 3rd defendant, not the plaintiff.

What right does the plaintiff have to sue on behalf of the 3rd respondent company? This is not a derivative action. The plaintiff does not file this action as a shareholder of the 3rd defendant company. Suffice it to say that this is against the fundamentals of Company Law. The plaintiff in

paragraph 24 of the amended plaint states “1 වන විත්තිකරු 3 වන විත්තිකරු සමාගමේ ප්‍රධාන කොටස් හිමියකු වන බවින් පැමිණිලිකරුවකු ලෙස එකතු කිරීම සඳහා 3 වන විත්තිකරුගේ කැමැත්ත ලබා ගැනීම ප්‍රායෝගිකව අපහසු කරුණක් බවත්, ඒ අනුව 3 වන විත්තිකරු මෙම නඩුවේ අත්‍යාවශ්‍ය පාර්ශවකරුවකු වශයෙන් විත්තිකරුවකු කර ඇති බවත්, එයට එරෙහිව කිසිදු සහනයක් මෙම නඩුවෙහි ඉල්ලා නොසිටින බවත් පැමිණිලිකරු ප්‍රකාශ කර සිටී.” The third paragraph of section 17 of the Civil Procedure Code states “*If the consent of anyone who ought to be joined as a plaintiff cannot be obtained, he may be made a defendant, the reasons therefor being stated in the plaint.*” By the aforesaid paragraph 24 in the plaint, the plaintiff accepts *inter alia* that (a) the 1st defendant is a majority shareholder of the 3rd defendant company; (b) the consent of the 1st defendant was not obtained to sue on behalf of the 3rd defendant; and (c) the 3rd defendant is an essential party to the action (the word used is “අත්‍යාවශ්‍ය”, not “අවශ්‍ය”). If the plaintiff himself says the 3rd defendant is an essential party to maintain this action, can he later move the Court to release the 3rd defendant without affording any reason? The answer is in the negative.

I have no hesitation in concluding that the plaintiff has no legal right to file action on behalf of the 3rd defendant company. On the other hand, without the 3rd defendant named as a party to the action, the Court cannot decide the rights of the 3rd defendant (by answering the aforesaid issues). The plaintiff contends that the affirmative answers to these issues benefit the 3rd defendant and they are not in derogation of the rights of the 3rd defendant. I am unable to accept this position. How does the Court know, for instance, whether the 3rd defendant wants to take over possession or continue to retain possession of the lands described in the schedule to the plaint, because such commitment also involves the discharge of corresponding obligations or responsibilities arising out of such commitment. On the other hand, if the Court answers these issues against the 3rd defendant, is the 3rd defendant bound by such order? The

answer is in the negative because the 3rd defendant is no longer a party to the action. Is this not a futile exercise? According to the proceedings dated 09.07.2009, the 3rd defendant has been discharged without any representation on its behalf. In my view, after the 3rd defendant was discharged from the proceedings, the Court cannot allow issue Nos. 1-6 to remain since those issues are directly relevant to the rights of the 3rd defendant.

Then the only remaining issue is issue No. 7 which refers to the reliefs as prayed for in the prayer to the plaint. This is a standard issue raised by any plaintiff as a matter of routine after having raised specific issues. Except paragraph (a) of the prayer to the plaint, all other prayers are related to the 3rd defendant which I have already dealt with. I carefully read the averments in the body of the plaint to learn that the plaintiff has filed this action to secure possession of the lands described in the schedule to the plaint on behalf of the 3rd defendant. Paragraph (a) of the prayer to the plaint should be understood in that context, not in isolation. This is easily discernible by reading paragraph 25 of the amended plaint where the plaintiff says that he intends to file a separate action for the enforcement of the agreement and claim compensation, which he has admittedly done subsequently.

Learned President's Counsel for the plaintiff, drawing the attention of Court to section 17 of the Civil Procedure Code, contends that an action cannot be dismissed on non-joinder of parties. Section 17 of the Civil Procedure Code reads as follows:

No action shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

This section states that without dismissing the action on non-joinder or misjoinder of parties, the Court may decide the rights of the parties who are actually before the Court. But in this case, as explained above, there are no rights to be safeguarded except for those of the 3rd defendant which, as I have already stated, cannot be done by reason of the fact that (a) the plaintiff cannot sue on behalf of the 3rd defendant, and (b) the Court cannot adjudicate the rights of the 3rd defendant without the 3rd defendant being a party to the case. Hence the plaintiff cannot shelter behind this section.

Learned President's Counsel for the plaintiff, also drawing the attention of the Court to section 18(1) of the Civil Procedure Code, says that if the Court thinks the 3rd defendant is a necessary party, the Court ought to add the 3rd defendant as a party to the action. Section 18(1) of the Civil Procedure Code reads as follows:

The court may on or before the hearing, upon the application of either party, and on such terms as the court thinks just, order that the name of any party, whether as plaintiff or as defendant improperly joined, be struck out; and the court may at any time, either upon or without such application, and on such terms as the court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in that action, be added.

There is no duty cast upon the Court to add parties and the Court may *ex mero motu* do so in a fit case. Upon the application of the plaintiff, the Court discharged the 3rd defendant. Does the plaintiff expect the Court to add the 3rd defendant soon thereafter? The plaintiff shall also

understand that the system of justice practiced in our country is adversarial not inquisitorial, and the Court shall adjudicate upon the dispute as it is presented before Court by the respective parties and not in the way the Court wants it to be presented.

I must also add that after the amendment to section 93(2) of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act No. 9 of 1991, the addition of parties after the day the case is first fixed for trial, which necessitates the amendment of pleadings, is extremely restricted. Section 18 shall be read together with section 93(2), not in isolation.

Learned President's Counsel also draws the attention of this Court to section 22 of the Civil Procedure Code to contend that the 1st and 2nd defendants cannot take up this objection of non-joinder of parties after the settlement of issues. Section 22 of the Civil Procedure Code reads as follows:

All objections for want of parties, or for joinder of parties who have no interest in the action, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the hearing. And any such objection not so taken shall be deemed to have been waived by the defendant.

The 1st and 2nd defendants took up the objection of misjoinder of the 3rd defendant in the answer, in the teeth of the plaintiff's averment in the plaint that the 3rd defendant is an essential party to the action. Thereafter when the plaintiff moved to discharge the 3rd defendant, the plaintiff submitted that without the 3rd defendant the reliefs sought by the plaintiff in the plaint could not be granted. Although this looks like the 1st and 2nd defendants are taking up a contradictory position, in the facts and circumstances of this case, the 1st and 2nd defendants were

constrained to do so and, in my view, they did the right thing. I hold that the plaintiff's action from the outset is misconceived in law.

I answer the questions of law in the negative and dismiss the appeal with costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Kumudini Wickramasinghe, J.

I agree.

Judge of the Supreme Court