

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

*In the matter of an application for
Leave to Appeal from the judgment of
the Civil Appellate High Court of the
Uva Province sitting in Badulla in
terms of Section 5C of the High Court
of the Provinces (Special Provisions)
Act No. 19 of 1990 as amended by Act
No.54 of 2006*

SC/APPEAL 47/2021

SC/ HCCA/ LA No.: 499/2019

UVA/HCCA/ BDL No.: 20/2017 (F)

District Court Monaragala Case No.:

L/1657

K.G. Somawathie,

Mudiyala, Kotagama,

Bibile.

PLAINTIFF

vs.

1. Y. R. Upul,
Wedikumbura, Monaragala.
2. Y.R. Nimal Jayathilaka,
No. 51, Dutugemunu Road,
Monaragala
3. W.G. Gunadasa,
No 48, Wedikumbura Road,
Monaragala.

DEFENDANTS

AND BETWEEN

1. Y. R. Upul,
Wedikumbura, Monaragala.
2. Y.R. Nimal Jayathilaka,
No. 51, Dutugemunu Road,
Monaragala
3. W.G. Gunadasa,
No 48, Wedikumbura Road,
Monaragala.

DEFENDANTS- APPELLANTS

Vs

K.G. Somawathie,

Mudiyala, Kotagama,

Bibile.

PLAINTIFF-RESPONDENT

AND NOW BETWEEN

1. Y. R. Upul,
Wedikumbura, Monaragala.
2. Y.R. Nimal Jayathilaka,
No. 51, Dutugemunu Road,
Monaragala
3. W.G. Gunadasa,

No 48, Wedikumbura Road,
Monaragala.

DEFENDANTS- APPELLANTS-PETITIONERS

Vs

K.G. Somawathie,

Mudiyala, Kotagama,

Bibile.

DEFENDANT-RESPONDENT-RESPONDENT

BEFORE : **S. THURAIRAJA, PC, J**
JANAK DE SILVA, J AND
MAHINDA SAMAYAWARDHENA, J

COUNSEL : Dr. Jayatissa de Costa with Charuka Ekanayake for the
Defendants-Appellants-Appellants
S.N Vijithsingh for the Plaintiff-Respondent- Respondent

WRITTEN SUBMISSIONS : Plaintiff-Respondent-Respondent on 15th July 2021
Defendants-Appellants-Petitioners on 14th July 2021

ARGUED ON : 15th September 2022

DECIDED ON : 14th December 2022

S. THURAIRAJA, PC, J.

The Plaintiff-Respondent-Respondent ("Hereinafter referred to as the "Plaintiff-Respondent") instituted action on 30.10.1996 in the District Court of Monaragala against the Defendants-Appellants-Appellants (Hereinafter referred to as "Defendants-Appellants") seeking order that the Plaintiff-Respondent is entitled to possess the land described in the first schedule to the Plaint, for ejection of the Defendants-Appellants from the land described in the second schedule to the Plaint, and for damages at Rs. 1500 per month. The Defendants-Appellants filed answer seeking dismissal of the action. Thereafter a commission was issued to W. Wilmot Silva, Licensed Surveyor for preparation of plan and he returned his commission with Plan No. 1038 dated 28/07/1998.

The facts relevant to this appeal are such that, at the initial stages of the trial on 03/03/1999, 23 issues were raised on behalf of both parties, with issues 1 to 10 raised on behalf of the Plaintiff-Respondent and issues 11 to 23 on behalf of the Defendants-Appellants. Subsequently, the case was taken up for trial before a new District Judge on 17/02/2000 where parties raised issues once again, with 27 issues being raised at this stage. At this juncture, issues 1 to 13 were raised on behalf of the Plaintiff-Respondent and issues 14 to 27 were raised on behalf of the Defendants-Appellants.

It appears that the District Judge delivered judgment dated 31/10/2007 answering 23 issues and granting reliefs prayed for by the Plaintiff-Respondent in her Plaint. The Defendants-Appellants being aggrieved that the issues raised at the subsequent stage not being answered appealed to the High Court of Badulla from this decision, and the appeal was dismissed by judgment dated 8/11/2012.

Subsequently, leave to appeal application no. SC/HCCA/LA/522/2012 was preferred before this Court and leave was granted on the question of whether the judgment of the District Judge could not stand due to failure to answer all questions raised at the trial. Judgment was delivered on 18/01/2016 by then Supreme Court

Judges; Justice Chandra Ekanayake, Justice S.E. Wanasundera, PC, and Justice Sisira J de Abrew, directing the District Judge of Monaragala to pronounce judgement on the issues framed and evidence led at the trial which commenced on 17/02/2000, and further dismissed the impugned judgment of the High Court of Civil Appeal.

However, when the original case record was sent back to the District Court of Monaragala, the learned District Judge appears to have sent a letter to the Judicial Service Commission, seeking advice for next steps to comply with the above directions as the District Judge concerned, Hon. M. W. J. K. Weeraman, had been subsequently promoted as a High Court Judge of Anuradhapura. The Judicial Service Commission had sent the original case record to the said Hon. M. W. J. K. Weeraman, who delivered judgment dated 23/11/2016 in the capacity of an Additional District Judge, granting reliefs prayed for by the Plaintiff-Respondent, answering 27 issues.

The instant appeal has been preferred from this aforementioned judgment by the Defendants-Appellants to the High Court, which dismissed the appeal on 13/11/2019, and subsequently before this Court. When the matter was supported before this Court on 22/03/2021, Court was inclined to grant leave on the question of law found in Paragraph 13 (ii) of the Petition dated 19/12/2019 as follows:

“Have their Lordship’s of the Court of Civil Appeal failed to observe that the Learned District Judge had failed to comply with the order/direction made by Your Lordships’ of the Supreme Court”

In addition to the above, Court raised another question of law as follows:

“The Judgment of the District Court dated 23/11/2016 which was affirmed by the Civil Appellate High Court is in inconformity with the Civil Procedure Act”

However, after hearing submissions of both Counsel on 15/09/2022, the Court inquired as to whether both questions were to be answered, to which both Counsel submitted

that the question raised by Court need not be answered as it will be redundant. As such it was agreed among the parties that the Court will only be answering the former question of law, and both Counsel made submissions on this sole agreed upon question of law.

In terms of the Supreme Court decision dated 18/01/2016, the crux of the matter was identified as the- judgment of the trial Judge only answering issues 1 to 23 framed at previous trial before the District Judge which commenced on 3/3/1999 and failure to answer issues admitted to second trial which appears to have commenced on 17/02/2000. The decision of the Supreme Court was to set aside the District Court judgment and High Court Judgment without costs and stands as:

“Having considered both the above judgments this Court is also of the view that the learned District Judge has failed to answer the correct set of issues admitted at the second trial and thereby substantial prejudice has been caused to the parties. Failure to answer the correct set of issues admitted to trial is a cardinal error committed by the District Judge...

“On careful consideration of all the material before this Court and the submissions of Counsel we are inclined to take the view that if the learned District Judge is directed to consider the issues admitted to the second trial which appears to have commenced on 17/02/2000 and the evidence led at that trial justice would be met. We therefore direct the learned District Judge of Monaragala to comply with the above order and to pronounce judgment on the issues framed and evidence led at the trial which appears to have commenced on 17/02/2000 as expeditiously as possible.”

As such, the only direction of this Court previously was for pronouncement of judgment based on the correct set of issues and evidence, and not a disturbance of the substance of this case nor a direction to lead fresh evidence or start any proceedings anew.

In order to affect the same, the Judicial Services Commission is in fact empowered to appoint the learned Judge as an additional District Judge for the purposes of pronouncing judgment. This position has been accepted previously by this court in multiple instances and is not a matter contested by either party.

In the case of **Hebtulabhoy & Co. Ltd. v. A. L. M. Fernando, High Court Judge & Others 1988 1 SLR 191** The 1st respondent was a District Judge who had heard and reserved order in a case where the petitioner was plaintiff. Before the order was delivered the 1st respondent was appointed as a High Court Judge. Subsequently, the Judicial Service Commission appointed the 1st respondent as an Additional District Judge to deliver judgment in certain cases heard by him as District Judge. When Order was made against the petitioner, application was made to the Court of Appeal to quash the order on the ground that the appointment by the J.S.C. was invalid, mainly for the reason that a Judge of the High Court cannot in law be appointed at the same time to be or to function as a District or Additional District Judge and/or be empowered to exercise two jurisdictions concurrently. Reference was made to this Court by the Court of Appeal regarding the same. It was held by this court in that instance that it is legally competent for the holder of the office of Judge of the High Court to function as a 'judicial officer' upon being appointed as such by the Judicial Service Commission to enable him to deliver judgment and/or to continue and conclude a case commenced by him previously as a 'judicial officer'.

In the instant case, the Judicial Service Commission has recommended the most suitable course of action as he was the Judge before whom evidence was led and matter was heard. The appointment of the most suitable person for this task is in

conformity with the direction of the Supreme Court to deliver judgment expeditiously and it is in the best interest of all parties involved.

I observe that this Court is not called upon to disturb the findings of the trial Judge as the question of law is purely as to whether the District Judge has adhered to the Supreme Court direction, which in the instant case, is to be answered without unnecessary investigation into the merits of this matter.

The previous direction of this Court focused solely on the failure of the original Judgment of the District Court to answer the correct questions before the trial judge, and the obligation placed upon the District Judge was merely to answer all questions raised at the subsequent trial, and not a direction to lead fresh evidence and conduct a trial anew. The judgment has not made any indication that the original findings in itself are unsupported. In light of the same, the judgment delivered by the learned judge in the capacity of an Additional District Judge in 2016 is in conformity with this direction as all 27 questions raised at the subsequent stage are answered.

While it is evident that the judgments in 2016 and in 2007 are similar, it is since the facts of the matter and the evidence considered is what was led before him at the initial stage. Simply due to the questions being framed more extensive, one cannot expect an overhaul of the entirety of the findings or for the judgment to be entirely contrary or be manifestly different when it is based upon the same material facts and evidence. As such, given that the procedure required has been followed and the directions of the Supreme Court have been met by answering all correct questions before the trial judge, the Defendant cannot hope to succeed in appeal simply on the basis that the decision is unfavourable to them and extending this trial on mere technicalities cannot be endorsed by this Court. As the reasons for the decision have clearly been provided, and the findings are based on the facts and evidence before the trial judge, no prejudice has been caused to the Defendant.

Considering all facts and submissions before this Court, due to reasons enumerated above, Appeal is dismissed with costs.

Appeal Dismissed.

JUDGE OF THE SUPREME COURT

JANAK DE SILVA, J

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J

I agree.

JUDGE OF THE SUPREME COURT