

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA.

C.A No: 905/99 (F)

D.C Avissawella 2762/Miscellaneous

P Imbulana,
Ruhina Mawatha,
Sinhapura, Pelawatta,
Battaramulla and

S L Imbulana Munasingha, C/1/3,
Elvitigala Flats, Colombo 8

Plaintiffs-Appellants

Vs

Dhammika Chulani Kiriella,
Imbulana,
Ruwanwella
Defendant- Respondent

Before: A.W.A Salam, J

Counsel : Appellants absent and unrepresented and
Nandapala Wickramasuriya for the defendant-respondent.

Argument fixed for: 19.09.2012

Decided on : 14.11.2012.

A W A Salam, J

This is an appeal preferred against the judgement
dismissing the plaint of the plaintiff by the learned
district judge, based on the failure to disclose the date

on which the cause of action arose. The plaintiffs filed action against the defendant by plaint dated 30th October 1995 to regain possession of the properties described in the first and second schedules to the plaint.

Quite significantly the plaintiffs failed to set out the exact date or the period during which the cause of action had allegedly accrued to them. The defendant in his answer raised a specific objection that by reason of the failure of the plaintiffs' to aver the date on which the cause of action arose, the action as constituted cannot be maintained against them. The basis on which the defendant raised the objection was the non-compliance of the mandatory requirements laid down in section 40 (d) of the Civil Procedure Code. The plaintiffs made an application to have the pleadings amended but the said application was rejected by the learned district judge. When the matter came up for trial the legal question regarding the non-compliance of section 40 (d) of the Civil Procedure Code was taken up as a preliminary question of law and by order dated 27 October 1999 the learned the district judge dismissed the plaint for failure to disclose the date on which the cause of action arose. On a perusal of the order made by the learned district judge I find that the plaintiffs have in fact failed to disclose the date on which the cause of action arose and thereby deprive the defendant of raising the question of prescription.

In the circumstances, the judgement of the learned district judge upholding the preliminary objection and dismissing the plaint on the ground of non-compliance of section 40 (d) of the Civil Procedure Code appears to me as quite consistent with the legal principles. Hence, I am not inclined to interfere with the said decision of the learned district judge and therefore dismiss this appeal without costs.

Judge of the Court of Appeal