

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

D.L.M. Pulleperuma,
227 / 10, Walawwatta,
Kesbewa,
Piliyadala.

Plaintiff

C.A. No. 921 / 2000 F

Vs.

D.C. Panadura No. 1159 / M

Samanthuwa Wasam Vinifred,
67, Mahabage Road,
Ragama.

Defendant

AND NOW BETWEEN

Samanthuwa Wasam Vinifred,
67, Mahabage Road,
Ragama.

Defendant Appellant

Vs

D.L.M. Pulleperuma,
227 / 10, Walawwatta,
Kesbewa,
Piliyadala.

Plaintiff Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSELS : Athula Perera for the Defendant Appellant
Percy Wickremasekera for the Plaintiff
Respondent

WRITTEN SUBMISSIONS ON: 29.11.2011 and 05.01.2012

ARGUED ON : 10.02.2012

DECIDED ON : 23.05.2012

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the Defendant Appellant (hereinafter referred to as the Appellant) in the District Court of Panadura seeking to recover a sum of Rs. 3,00,000/- from the Appellant. The Appellant filed answer praying for a dismissal of the Respondent's action. The learned District Judge held in favour of the Respondent.

The facts of the case were briefly as follows; The Respondent has purchased a bus bearing No 30 Sri 161 from the Mercantile Credits Ltd on a Hire Purchase Agreement. Thereafter by a Power of Attorney the Appellant has been appointed as the Power of Attorney Holder of the Respondent to perform works inter alia to pay the rentals to the Mercantile Credits Ltd. which were due on the

said Hire Purchase agreement. The Appellant too has agreed to perform the tasks entrusted by the said Power of Attorney in order to acquire the ownership of the said vehicle. Since the Appellant had failed to pay the lease rentals from 04.03.1990 the Mercantile Credit Ltd. has filed action against the Respondent in the District Court to recover the money due on the Hire Purchase Agreement. Said case has been settled between the Respondent and the Mercantile Credit Ltd. on the basis of paying a sum of Rs. 280,000/- to the Mercantile Credit Ltd by the Respondent before March, 1995. In the meanwhile the Appellant had taken the bus in to his custody despite the request made by the Respondent to hand over the bus to him.

The Appellant took up the position that he purchased the said bus from the Respondent for a sum of Rs. 100,000/- on 04.03.1990 and the action of the Respondent is prescribed in law.

I first deal with the question of prescription. The Appellant having relied upon the date of execution of the Power of Attorney namely 04.03.1990 and the date of institution of the action in the District Court namely 12.12.1994 and since then 03 years had lapsed, contended that in terms of the provisions of Section 10 of the Prescription Ordinance the Appellant's action has prescribed in law.

Section 10 of the Prescription Ordinance stipulates that "No action shall be maintainable in respect of any cause of action not herein before expressly provided for, or expressly exempted from the operation of this Ordinance, unless the same shall be commenced within three years from the time when such cause of action shall have accrued." It appears that Section 10 has no relevance to the present case. No doubt that since the Appellant has agreed to perform the

conditions laid down in the said Power of Attorney the applicable Section to the said transaction between the Appellant and the Respondent is Section 6 of the Prescription Ordinance. Hence in terms of Section 6 of the Ordinance the action of the Respondent is not prescribed in law.

The Appellant's next submission was that he purchased the said bus from the Respondent for a sum of Rs. 100,000/- on 04.03.1990. But the said Power of Attorney to which the Respondent also placed his signature has made no reference to such transaction between them. On the other hand the Appellant has not produce any documentation to prove that he bought the said bus on a payment of Rs. 100,000/-.

When I consider the said evidence I am of the view that the learned District Judge has rightly concluded that the Respondent was entitled for a judgment as prayed for in the plaint.

In the said circumstances I see no reason to interfere with the said judgement of the learned District Judge dated 31.08.2000. Therefore I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal