

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

S. A. I. A. Haleem
P.O. Box 4104,
Dubai,
United Arab Emirates

PLAINTIFF

C.A. 287/1998 (F)
D.C. Colombo 3426/Spl.

Vs.

The Attorney General
Colombo 12.

DEFENDANT

And between

The Attorney General
Colombo 12.

DEFENDANT-APPELLANT

Vs.

S. A. I. A. Haleem
P.O. Box 4104,
Dubai,
United Arab Emirates

PLAINTIFF-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: M. Goonetilleke S.S.C. for the Defendant-Appellant
Plaintiff-Respondent is absent and unrepresented

ARGUED ON: 27.01.2012

DECIDED ON: 15.05.2012

GOONERATNE J.

This is an appeal by the Hon. Attorney General who was the Defendant in the District Court case . Plaintiff-Respondent filed action for a declaration that the forfeiture of 182 gold slabs were wrongful, unlawful and contrary to law, and also to be declared owner of the said gold slabs. Plaintiff in the prayer has also moved court for the return or delivery of the gold slabs and damages in a sum of Rs. 1, 000.000/- with interest. According to the available material on 22.9.1991 the Plaintiff was a transit passenger at the Katunayake International Airport en route to Madras from Dubai and that he was in possession of 182 gold slabs on 25.9.1991 the above gold

slabs were forfeited and a penalty of 3 times the value of the gold being Rs. 35,014,918/- was imposed by the Customs Authority on the Plaintiff-Respondents. Thereafter this amount had been mitigated to Rs. 2,500,000/-

It is the position of the Appellant that the Plaintiff-Respondent had instituted a separate action in the District Court of Negombo. D.C. No. 7557/M) on the same facts and same relief. When the Colombo District Court case was taken up the Negombo District Court case had been laid by. Parties proceeded to trial on 5 admissions (forfeiture, penalty imposed and it's mitigation to a sum of Rs. 2.5 million paid by Plaintiff, notice and security for costs) and 21 issues.

The Plaintiff at the trial led the evidence at 3 witnesses. Two receipts P1 & P2 had been produced at the trial to prove his claim but the Defendant met this position on the basis that P1 & P2 had not been produced at the time of detection or at the Customs Department inquiry. P1 & P2 were objected by the Defendant-Appellant and no clear answers were given by the Plaintiff about same. Nor were the documents proved subsequently. Evidence led demonstrate that the gold in his possession was taken by him to India for his future to be used for his daughter's marriage. No application had been made by Plaintiff or permission obtained for possession of gold. Plaintiff simply relied on a broker who got the gold for him and Plaintiff

believed the broker as regards the necessary authorization. Proceedings also indicate certain contradictions (D 7a to D7g) on statements made by plaintiff to Customs Officers on 21.9.1991. Statement D5 & D6 were admitted. It appears that Plaintiff admitted that he had no permission or authority from the Central Bank of Sri Lanka or the Controller of Exchange to bring gold to this country.

On behalf of the Defendant about 3 witnesses had given evidence to support the detection and forfeiture of gold. There was direct evidence of the witness that Plaintiff concealed gold in the waste-coat worn as an undergarment. Witness of the Defendant questioned the Plaintiff on suspicion and searched the Plaintiff and detected all the gold slabs. Defendant had closed the case reading in evidence documents D1 – D12. It was the position of the learned Senior State Counsel for the Defendant-Appellant that the trial Judge had erred and misdirected on very many material points of fact and law. He submitted inter alia that trial Judge was in grave error on the question of Jurisdiction of Courts.

The ground of appeal are more particularly contained in paragraph 11 of the Petition of Appeal. It would be necessary to incorporate same in this judgment as follows, in view of the fact that certain basic errors

are highlighted in the judgment as submitted to this court by learned Senior State Counsel.

- (a) the learned District Judge erred in the determination of the Issue 7, namely whether the District Court of Colombo has jurisdiction to entertain the Plaint of the Plaintiff and/or to hear and determine this action.
- (b) The learned District Judge erred by not considering the legal effect of the D.C. Negombo case already instituted by the Plaintiff and which had been laid by.
- (c) The learned District Judge erred by determining that the District Court of Colombo has territorial jurisdiction to hear this case on the basis that the Defendant being the Attorney General, has his office in Colombo.
- (d) The learned District Judge erred on questions of fact and law in holding against the Defendant-Appellant on the Issue of Prescription.
- (e) The learned District Judge erred by determining that the gold was seized as forfeited on 25th September 1991, and not on the 21st September 1991.
- (f) The learned District Judge erred by on questions of both facts and law in holding and determining that P1 & P2 documents as proved.
- (g) The learned District Judge failed to consider the imperative requirements set out in section 154 of the Customs Ordinance.
- (h) The learned District Judge failed to consider the fact that the Plaintiff-Respondent was in fact in the process of leaving the airport to enter into the country when the detection was made, and therefore could not be considered or treated as a transit passenger.
- (i) The learned District Judge has considered irrelevant and immaterial facts in making the aforesaid order and has also considered matters of hearsay, uncorroborated and unsubstantiated matters.
- (j) The learned District Judge misdirected himself on the admissibility of admissions made by a party to the action and as such erred in law by refusing the Defendant's application to lead in evidence such statements
- (k) The learned District Judge misdirected himself when considering the credibility of witnesses.
- (l) The learned District Judge misdirected himself and erred in law and in fact by awarding Rs. 100000/= as prayed for in prayer (e) of the Plaint, as evidence had not been led in this regard.

I have considered the oral and very comprehensive written submissions of the Defendant-Appellant as presented by learned Senior State Counsel. I am of the view that the trial Judge was in very grave error on the jurisdiction aspect as challenged by the Defendant-Respondent. I agree with the learned State Counsel that the office of the Hon. Attorney General by any sense of imagination, be said to be the residence of the Attorney-General, merely because the office of the Attorney General is within the territorial jurisdiction of the District Court of Colombo, would not certainly satisfy the residence requirement under section 9 of the Civil Procedure Code. It is ridiculous to arrive at a conclusion that the office of the Attorney General is within the jurisdiction of Court.

Blue Diamond Ltd. Vs. Amro Bank 1993 (2) SLR 249 at 264/265. The question relating to 'residence' of a corporate personality was examined. The learned trial Judge went completely wrong in his reasoning. The judgment of the Original Court is nothing but a perverse judgment.

I also refer to the following as regards jurisdiction, as described in the written submissions.

The evidence presented in this case by both the Plaintiff and the Defendant clearly establishes that the Plaintiff arrived at the Katunayake International Airport, the detection of gold was made at the said Airport, the seizure of the gold as forfeited to the state took place at the said Airport, the subsequent customs

inquiry took place at the said Airport and the declaration of forfeiture also took place at the said airport.

Accordingly it will be clear to court that all facts relating to the transaction which resulted in this present action, have taken place at the Katunayake International Airport. Clearly, the said Airport is outside the territorial limits of the jurisdiction of this court. As such, it cannot be said that the cause of action allegedly set out in the plaint arose within the territorial limits of the jurisdiction of this court.

There is also reference to non-compliance of Section 154 of the Customs Ordinance. Such section requires.

- (a) notice be given to Director General of Customs or other officer to enable Plaintiff to claim, within 1 month of seizure.
- (b) Give cash security.
- (c) Institute action within 30 days of cash security and notice.

The detection was made on 21.9.1991. there is ample evidence on that aspect. As such I have no hesitation in endorsing the views expressed by Senior State Counsel – vide Shiabdeen Vs. A.G 1978 – 79 (2) SLR 1 at pgs. 4/5. As such clearly the evidence indicate non-compliance with Section 154 of the Customs Ordinance.

Another important observation is on documents D5 & D6. The following inferences are drawn.

- (1) Total contradictions of each other statement of Plaintiff-Respondent.
- (2) Admission of Plaintiff he is not the owner of gold slabs.
- (3) Gold taken over from one Sheriff to be taken to Madras. Payment produced for the task.

I find evidence and material placed before court on a variety of matters which in fact damage the case of the Plaintiff-Respondent and the trial Judge has simply ignored the bulk of evidence and the firm legal provisions contained in the Customs Ordinance and the Exchange Control Law. Both laws need to be strictly interpreted. It is very unfortunate that the trial Judge thought it fit to enter judgment in favour of the Plaintiff without cogent reasons. It is a perverse judgment, which has ignored very basic facts and applicable/relevant statutory provisions. This is a civil case where very many admissions were recorded. Plaintiff admitted that he has no permit/licence or other authority to deal with gold slabs. Central Bank or the Controller of Exchange had not issued or given any authority to the Plaintiff to deal in the way he dealt his case according to his own pleadings. Plaintiff's own evidence and version would offend his own case.

In all the above facts and circumstances of this case I set aside the judgment of the learned District Judge dated 5.12.1997, and grant all the relief prayed for in the Petition of Appeal.

Appeal allowed.



JUDGE OF THE COURT OF APPEAL