

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

Kusumawathie Jayasinghe  
57, Maththegoda,  
Polgasowita.

**PLAINTIFF**

C.A 466/1998  
D.C. Homagama 1604/RE

Vs.

Devapura Devage Saranelis  
55, Near Sarana Dhamma Viharaya  
Maththegoda, Polgasowita.

**DEFENDANT**

**AND**

Devapura Devage Saranelis  
55, Near Sarana Dhamma Viharaya  
Maththegoda, Polgasowita.

**DEFENDANT-APPELLANT**

Vs.

Kusumawathie Jayasinghe  
57, Maththegoda,  
Polgasowita.

**PLAINTIFF-RESPONDENT**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** W. Dayaratne P.C., with D. Dayaratne  
For the Defendant-Appellant

Edward Ahangama for the Plaintiff-Respondent

**ARGUED ON:** 18.06.2012

**DECIDED ON:** 17.10.2012

**GOONERATNE J**

Plaintiff-Respondent filed action in the District Court of Homagama to evict the Defendant-Appellant and claim arrears of lease rental/damages as prayed for in the plaint. The case of the Plaintiff was that by lease agreement P1 of 28.11.1988, the premises described in the schedule to the plaint had been leased to the Defendant for a period of 1 year for Rs. 1500/=. The premises bears assessment No. 55 and the Defendant never paid the said sum. As such quit notices P2 and P3 had been dispatched to Defendants. An extract from another case 1184 were also marked as P5 and P5a & P5b.

I have perused the judgment of the learned trial judge who has carefully gone through the evidence and answered all the issues which

favour the Plaintiff-Respondent. The evidence at the trial, it had transpired that the Plaintiff is the owner of ½ share of the property and the balance to her children. This was due to the demise of her husband. P1 was executed and no consideration passed. The Notary also gave evidence and confirmed the above. There has also been some evidence led to show that premises no. 65/1 pertains to V1, the electoral register and the Defendant claimed that premises No. 65A which belonged to the Plaintiff was occupied by the Defendant. This position was rejected by Plaintiff. The electoral list V1 refer to another premises 65/1. The point stressed by the Defendant-Appellant was that he had been employed by Plaintiff's husband and that in view of his service to the Plaintiff's husband he was permitted to occupy the premises in dispute.

The trial Judge has considered the evidence of execution of lease document P1, and given reasons for accepting same though the Defendant denied having entered into such a lease agreement. In a brief judgment the trial judge has given his mind and very correctly dealt with all primary, facts and I do not intend to disturb those findings. 1993 (1) SLR 119; 20 NLR 332; 1955 (1) All. English Reports 326.

In the appeal, learned President's Counsel for Defendant-Appellant took up a jurisdictional issue for the first time in the appeal, as

pleaded in paragraph 8 of the Petition of Appeal and argued that this matter should have been referred to the Mediation Board and the original court in view of that, had no jurisdiction and judgment entered without jurisdiction is null and void.

Appellant also state that Plaintiff had falsely averred in the plaint that the value of the action is Rs. 50,000/-. Attention of this court is drawn to the lease rental fixed at Rs. 1500/-, damages claimed is only Rs. 500/- and the total damages as calculated by the Appellant would be Rs. 12,500/- or Rs. 13,000/-. All these points are suggested to drive the point that the action is below Rs. 25,000/- and as such Plaintiff should go before the Mediation Board as the value is below 25,000/-. The emphasis seems to be on Section 7(1) A of the Mediation Board Act. Several case laws are also cited by learned President's Counsel.

The learned counsel for Plaintiff-Respondent on the other hand emphasised on compliance with Section 76 of the Civil Procedure Code.

Section 76 read thus:

“If the defendant intends to dispute the averments in the plaint as to jurisdiction of the court he must do so by a separate and distinct plea expressly traversing such averments”

I had the advantage of reading the authorities cited by both parties. Having acquiesced in the proceedings in the original court and in the

absence of a plea on jurisdiction, and after a full trial before the original court, it would be unreasonable to take up such a plea at the appeal unless there is a total patent lack of jurisdiction. The value according to the plaint is Rs. 50,000/-. When the case relates to land variable values could be suggested. I am more inclined to consider the following case law which support the case of the Plaintiff-Respondent.

#### On value

“Where in a case in which the question of jurisdiction dependant on the value of the property, no objection was raised to the valuation of the subject matter given in the plaint, the competency of the court in respect of its monitory jurisdiction cannot be challenged in a subsequent action between the parties.

#### Lebbe vs. Banda 20 NLR 343

“The value of the subject matter of a possessory action for the purpose of jurisdiction when the suit is brought by a lessee is not the value of the unexpired term of the lease, but the value of the land itself”.

#### Devasadayam vs. Azeez 57 NLR 19

“In order to ascertain whether an action is within or beyond the pecuniary jurisdiction of a court it may be necessary to examine not only the plaintiff’s claim but also the defendant’s answer to it”.

## Jurisdiction

Blue Diamonds Limited vs. Amsterdam – Rotterdam Bank M.V and Another 1993 (2) SLR 249

“In traversing jurisdiction the answer must in terms of section 76 of the CPC do so by a separate and distinct plea expressly traversing such averment. The general denial is insufficient. Even a specific denial of the paragraph would generally be insufficient if it could not indicate whether the defendant...” – and gives the instances. The Supreme Court further held, “What section 76 requires is a specific denial of jurisdiction .....” Pleas see the requires is a specific denial of jurisdiction .....

Jalaldeen vs. Rajaratnam 1986 (2) SLR 201

The Court decided that the objection to the jurisdiction must be taken at the earliest opportunity. In reply to the question that the institution of the action by section 22(7) of the Rent Restriction Act could not have been proceeded to hear and determine, Court of Appeal held that the court had jurisdiction.

Joonoos vs. Chandraratne 1990 (2) SLR 337.

The Court of Appeal held that if the jurisdiction is being denied by a defendant, he must traverse jurisdiction by a separate and distinct plea.

Candappa nee Bastian vs. Ponnambalampillai 1993 (1) SLR 184

“A party cannot be permitted to present in appeal a case different from that presented in the trial court where matters of fact are involved which were not in issue at the trial such case not being on which raises a pure question of law”

In all the above circumstances I am not inclined to accept the views expressed on behalf of the appellant. What matters in a case of this nature is the value of the land itself. In the absence of contesting jurisdiction of court at the very outset it is my view that, non compliance with Section 76 of the Code, would be to conclude that challenge to value was never in the contemplation of parties. The damage caused to a party is something to be proved which may vary from case to case depending on the subject matter and the circumstance of each case. There could be an instance where the land value exceeds the monetary value suggested in the Mediation Board Law (in the range of million) but the damage cause to the property may not be excessive. In case of recovery of possession to the property or declaration of title, it is safe to rely on the value of the property. In the circumstances I affirm the judgment of the District Court. Appeal dismissed without costs.

Appeal dismissed.

A handwritten signature in black ink, appearing to read 'A. G. Ganesan', written in a cursive style.

JUDGE OF THE COURT OF APPEAL