IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA.

C.A. 872/1996 F

D. C. BALAPITIYA 1135 /L

HALAMBAGE DON WILSON,

NO 1, MAIN STREET, ELPITIYA

PLAINTIFF-APPELLANT

VS

V M WILSON,

SRI SALOON,

MAIN STREET, ELPITIYA.

K G E CHITRANI DE SILVA,

KALUGAHAWATTA,

NARIGAMA, HIKKADUWA

DEFENDANT-RESPONDENTS

Before: A.W.A.Salam. J

Counsel: W D Weeraratna for the plaintiff-appellant and Rohan Sahabandu for the defendant-respondents
Written submissions filed on: 28.07.2011
decided on: 13.12.2011

no authority to dismiss the plaintiff's action whilst refusing the application for an amendment.

The learned district judge had every right to refuse the amendment but he had no authority whatsoever to dismiss the plaintiff's action simultaneously with the refusal of the application for an amendment. It is left to the discretion of the counsel for the plaintiff-appellant to decide whether he would continue with the action on the plaint without a schedule. To this extent, in my opinion the impugned order of the district judge should stand corrected. For reasons stated above the order of the learned district judge refusing the application for an amendment to the plaint is affirmed and the order dismissing the action of the plaintiff is set aside. In the circumstances, the learned district judge is directed to resume the trial and conclude the same according to law. Since the confusion has occurred as a result of the misconception on the part of the court, it is not appropriate to direct the defendant-respondents to pay costs. Hence, I make no order as to costs.

Appeal partly allowed.

Judge of the Court of Appeal

The plaintiff-appellant instituted action against the defendant-respondent seeking a declaration of title for the premises in suit set out in the schedule to the plaint. The plaint was amended twice and the second amended plaint contained no schedule describing the subject matter. Apparently, the plaintiff-appellant having taken no notice of the omission in the second amended plaint as to absence of a fuller description of the subject matter proceeded to trial and formulated the issues as well. In doing so, the plaintiff-appellant took upon himself the burden of establishing the identity of the subject matter by raising the first two issues.

Quite significantly, at the resumption of the trial on 20.2.1996 the defendant-respondents admitted the subject matter and the district judge accordingly made an entry to that effect in the proceedings. Despite the admission made with regard to the identity of the subject matter, half way through the evidence of the plaintiff-appellant, upon discovering that the second amended plaint contained no schedule, the learned counsel of the plaintiff-appellant moved for an amendment of the plaint to which application the learned counsel for the defendants objected and thereafter the application for amendment of plaint was set down for order. By order dated 22.8.1996 the learned district judge having disallowed the application to amend the plaint based on the ground of laches on the part of the plaintiff-appellant dismissed his action. The present appeal has been preferred by the plaintiff-appellant, challenging the validity of the said order of dismissal and to have the matter sent back to the court exercising original jurisdiction to hear and conclude the same.

The main ground on which the plaintiff-appellant has placed reliance for purpose of his appeal is the misdirection in dismissing the action, even if the refusal to grant further the amendment of the plaint is justifiable. No doubt, the plaintiff-respondent is guilty of latches and his belated application to amend the plaint for the third time so as to include a schedule to the plaint cannot be justified, specifically when the application had been made after the commencement of the trial. By reason of the admission made by the defendant-respondents as to the identity of the subject matter, it may not be strictly necessary to him in the plaint as pleadings recede to the background once issues are raised. Be that as it may, even in the event of an application for an amendment of the plaint is refused, yet the learned district judge had