

In the court of appeal of the Democratic Socialist  
Republic of Sri Lanka.

Case No. CA 282/97F

D.C. (Kurunegala) 4550/L

I P Menika, Temple Road,  
Amabanwata, Humbuluwawa,  
Alawwa

**Defendant-Appellant**

Vs

1. W M Siriwardena,
2. H M Somawathie

Both of "Chandrapaya", Mahragamawatta,  
Giriulla.

**Plaintiff- Respondents**

A.W.A.Salam. J

Lakshman Perera with Pasan Gunasena and Dulantha Perusingha for the Defendant-Appellant and Mudithavo Premachandra for the Plaintiff-Respondents.

**Argued on: 13.01.2011**

**Written Submissions tendered on: 14.02.2011**

**Decided on: 06.06.2011**



A W A Salam, J

The plaintiffs filed action seeking inter alia a declaration of title to the subject matter admittedly a paddy field and ejection of the defendant. Although the defendant filed answer admitting the corpus and the title pleaded by the plaintiff, objected to the jurisdiction of court on the premise that he is an "ande" cultivator of the field.

The main issue raised by the plaintiffs' relates to the alleged unlawful possession of the defendant of the paddy field as from 1988 yala season. The defendant raised the plea of want of jurisdiction and prescription of the cause of action.

The defendant in his answer failed to seek any relief except the dismissal of the action and cost of suit. The defendant has not sought any declaration either to have himself declared as "ande" cultivator or for any other relief in the assertion of his "ande" rights.

Arising from the answer of the defendant, the plaintiffs' raised an issue as to whether the averments 8, 9, 10, 11, 12 and 13 contained in the plaint should be deemed to have been admitted by the plaintiff. Another important consequential issue raised by the plaintiff was

whether the defendant is entitled to raise the defence of limitation/prescription by reason of her failure to admit or deny paragraph 13 of the plaint.

At the trial the 1st plaintiff gave evidence and also led the evidence of the Grama Niladhari of the area and closed the case producing documents P1 to P 25. None of the documents marked by the plaintiff were objected to by the defendant at the close of the plaintiff's case, when documents were read in evidence. Therefore, the documents marked as P1 to P 25 should be taken as evidence for all purposes, even though some of the documents appear to have been marked subject to proof. The documents produced by the plaintiffs include several agricultural registers in which the name of the plaintiffs' had been entered as the landlords without specifying the name of anyone as "ande" cultivators. Documents marked as P14 to P25 are receipts produced in proof of the payment of acreage tax. Several other important documents produced in proof of the plaintiffs' claim are P5 to P8 which demonstrate the mode of payment made to the defendant namely as wages for cultivating the field in question. P5 to P8 clearly indicate the nature of the work and the capacity in which the defendant rendered his services. Even though the defendant had suggested that his signature had been obtained improperly on P5 to P8

the learned district judge had rightly rejected the suggestion. As has been observed by the trial judge the failure on the part of the defendant to complain to anyone in authority as regards the exercise of duress in obtaining his signature further weakens his case.

Even though an application has been made by the 1st plaintiff, to the agricultural services district office in order to have the subject matter released in terms of section 2 of the Agricultural Services Act, it was subsequently dismissed upon being withdrawn by the 1<sup>st</sup> plaintiff. Therefore, in my opinion the learned district judge's conclusion regarding the failure to prove duress is quite rational.

In any event the defendant had been at a tremendous disadvantage in establishing his version as he had not specifically denied the several averments in the plaint. The authorities cited by the learned counsel for the defendant are applicable in respect of a failure of the plaintiff to file a replication to controvert a counter claim made in the answer and not when the defendant fails to comply section 75 of the Civil Procedure Code.

In the circumstances, I am not inclined to think that the appeal preferred by the defendant-appellant challenging the propriety of the

judgment merits consideration. As such, it is my considered view that the learned district judge has rightly concluded that the plaintiffs' are entitled to judgment.

For the above reasons the judgment appealed against is affirmed and the appeal dismissed without costs.

Judge of the Court of Appeal

NT/-