

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

CA. 1006/96(F)
D.C. Kurunegala. 4546/L

M.A. Kiribanda
No. 157, Jayanthipura,
Battaramulla
Plaintiff

Vs

1. I.M.
Ariyaratne,
Grama
Niladhari,
Hangamuwa
Palatha,
Hangamuwa,
Maeliya

2. Attorney General,
Attorney General's
Department, Colombo
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Defendants

AND NOW BETWEEN

M.A. Kiribanda
No. 157, Jayanthipura,
Battaramulla
Plaintiff-Appellant

Vs

1. I.M. Ariyaratne, Grama
Niladhari, Hangamuwa Palatha,
Hangamuwa, Maeliya

2. Attorney General,
General's Department,
Defendant-Respondent

Before: A.W.A.Salam. J
Parties absent and unrepresented.
Argued on: 13.01.2011
Decided on: 07.06.2011

A W A Salam

The Plaintiff-Appellant sued the defendant-respondents by plaint dated 21 February 1994. By the said plaint the plaintiff-appellant claimed a sum of Rs. 10,000/= from the 1st defendant-respondent by way of damages caused by him to his property. For reasons best known to the plaintiff-appellant he has also made the Honourable Attorney General a party defendant. However, quite surprisingly no relief has been sought against the Attorney General. The 1st defendant-respondent was represented by a member of the private bar which indicates that the conduct of the defence on his behalf has not been taken over by the Attorney General's Department.

By order dated 5 September 1996 the learned district judge upon being invited by the learned State Counsel who represented the Attorney General, discharged the 2nd defendant-respondent from the action. This appeal has been preferred by the Plaintiff-Appellant against that order.

As a matter of law in terms of Section 18(1) of the Civil Procedure code "The court may on or before the hearing, upon the application of either party, and on such terms as the court thinks just, order that the name of any party, whether as plaintiff or as defendant improperly joined, be struck out..."

In the case of *Podihamy v. Seimon Appu* (47 NLR 503), it is laid down that the court is not bound to dismiss an action on the ground of misjoinder of parties and causes of action and that it can strike out a wrongly joined defendant and allow the action to proceed as against the others.

Section 14 of the Civil Procedure Code enacts that “All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action and judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities.....”

In the light of the above provisions of the law there is no obstacle in the way of the plaintiff to join as many defendants as it pleases him if the right to any relief is alleged to exist against all of them jointly, severally, or in the alternative in respect of the same cause of action. Therefore, when a plaintiff elects to sue more than one defendant, he is obliged in law to plead in his plaint as to the basis of his right, to sue the defendants.

As the plaintiff has failed to state in his plaint the basis on which the Attorney General is answerable to the alleged cause of action pleaded against him, the learned district judge was correct in exercising his discretion to strike off the Attorney General from being a party defendant in the case.

In the light of the factual and legal background set out above, it is my opinion that the Attorney General has been improperly joined as a defendant in the caption as the plaint contained no averments demonstrative of any right to relief in respect of the same cause of action against the A.G. Further, the plaintiff has not identified the capacity

in which the Attorney General has been joined as a Defendant. As such, the impugned order of the learned district judge warrants no intervention of this court by way the exercise of the appellate jurisdiction of this court.

Appeal dismissed without costs.

Judge of the Court of Appeal