

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

Mohamed Muhutar Sitti Rahuma Beebi,  
29 / 2, Gonawala Road,  
Digana, Rajawella.

Plaintiff

**Vs.**

C.A. No. 152 / 2000 F  
D.C. Kandy No. 11892 / X

Mohomed Mustapha Mohamed Raseen,  
29 / 2, Gonawala Road,  
Digana, Rajawella

Defendant

**AND NOW BETWEEN**

Mohamed Muhutar Sitti Rahuma Beebi,  
29 / 2, Gonawala Road,  
Digana, Rajawella.

Plaintiff Appellant

**Vs**

D.C. Kandy No. 11892 / X  
29 / 2, Gonawala Road,  
Digana, Rajawella

Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Plaintiff Appellant is absent and  
unrepresented.  
Shamir Zavahir with Murshid Maharooof for  
the Defendant Respondent

ARGUED ON : 02.03.2012

DECIDED ON : 15.03.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) has instituted the said action against the Defendant Respondent (hereinafter referred to as the Respondent) to recover a sum of Rs 80,000/- per month from October 1994. She has averred that she was a partner of the partnership business called "Dumbara Fertilizer" and the Respondent has failed to pay the Appellant's share of the partnership profit at the rate of Rs. 80.000/- per month. The Respondent took up the position that there was no written partnership agreement and in terms of Section 18 of the Prevention of Frauds Ordinance the Appellant could not maintain the action.

After trial the learned Additional District Judge has dismissed the Appellant's action with costs by a judgment delivered on 25.02.2000. Being aggrieved by the said judgment the Appellant has appealed to this Court.

At the trial the Appellant did not produce a partnership agreement. Hence I now consider whether the Appellant can maintain this action in view of

the provisions contained in Section 18 of the Prevention of Frauds Ordinance which stipulates as follows;

18. No promise, contract, bargain, or agreement, unless it be in writing and signed by the party making the same, or by some person thereto lawfully authorized by him or her, shall be of force or avail in law for any of the following purposes : -

- a. for charging any person with the debt, default, or miscarriage of another ;
- b. for pledging movable property, unless the same shall have been actually delivered to the person to whom it is alleged to have been pledged ;
- c. for establishing a partnership where the capital exceeds one thousand rupees : Provided that this shall not be construed to prevent third parties from suing partners, or persons acting as such, and offering in evidence circumstances to prove a partnership existing between such persons, or to exclude parol testimony concerning transactions by or the settlement of any account between partners.

In the case of Rajaratnam Vs the Commissioner of Stamps 39 NLR 481 it was held that “the partnership could not be established in the absence of a written agreement.”

In the case of Sivakumaran Vs Rajasegaram 63 NLR 556 it was held that “the evidence led in the case established that the business was a de facto partnership and not a co-ownership, although the shares of the plaintiff and defendant were unequal in the proportion of two-thirds and one-third respectively. The rights of the plaintiff and defendant in the business, derived though they were from the father, were the result of the creation of the de facto partnership and not something independent of it. In the circumstances, since there was no agreement in

writing as required by section 18 (c) of the Prevention of Frauds Ordinance, the present action was not maintainable.”

When I come back to the present case it was common ground that there had been no partnership agreement in writing. If so the law is very clear that in such a situation the Appellant cannot have and maintain an action in relation to the partnership business called ‘Dumbara Fertilizers’ without a written agreement. It seems that the learned Additional District Judge has dismissed the Appellant’s action on the said basis. Hence I find no reason to interfere with the said judgment of the learned Additional District Judge delivered on 25.02.2000. Therefore I dismiss the instant appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal