

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

C.A. 598/98 (F)

D.C. Colombo Case No. 3465/Spl

Paddy Marketing Board
No: 3A,
Wihara Mawatha,
Meethotamulla,
Wellampitiya.

Appellant

Vs.

L.De.A. Dissanayake
Mahawatte Road,
Mirihana,
Nugegoda.

Respondent

Before : **K. T. Chitrasiri, J.**

Counsel : Vicum de Abrew, D.S.G. for the Defendant-Appellant.

Plaintiff-Respondent is absent and unrepresented.

Argued &

Decided on : 02.12.2013

K. T. Chitrasiri, J.

Plaintiff-Respondent has not responded to the notices sent on several occasions under registered cover, by the Registrar of this Court. The defendant-appellant also was directed to find out the whereabouts of the respondent. Despite all those attempts, the respondent has failed to come before this Court. Therefore, the matter is taken up for argument in his absence. Accordingly, learned D.S.G. was heard in support of this appeal.

Learned D.S.G. submitted that it is wrong to have answered the issue No. 31 affirmatively in view of Section 23 of the Interpretation Ordinance. Issue 31 is as follows:-

“ 31. කෙසේ වෙතත් විත්තිකාර මංඛලය විසින් පවත්වන ලද පරීක්ෂණ හා අභියාචනා නීති විරෝධී, අවලංගු හෝ බල රහිත වන්නේ යයි පැමිණිලිකරු විසින් කියා සිටින්නේ නම්, ඒවාට එරෙහිව එවා අවලංගු බව හෝ බල ශූන්‍ය බව ප්‍රකාශ කිරීමට මෙම අධිකරණයට අධිකරණ බලයක් ඇද්ද ?”.

(Vide proceedings at page 90 of the appeal brief)

Accordingly, he argued that the learned District Judge had no jurisdiction to hear and determine this action in terms of the aforesaid Section 23.

Learned District Judge by his judgment dated 30.07.1998 decided the case in favour of the plaintiff having answered the issue No. 31 affirmatively. Therefore, a question of law has arisen to determine whether the learned district judge had the jurisdiction to hear and determine this action of the plaintiff-respondent in view of Section 23 of the Interpretation Ordinance. Section 23 of the Interpretation Ordinance reads thus:

23. *Subject to the provisions of section 24, where a court of original civil jurisdiction is empowered by any enactment, whether passed or made before or after the commencement of this Ordinance, to declare a right or status, such enactment shall not be construed to empower **such court to entertain or to enter decree or make any order in any action for a declaration of a right or status upon any ground whatsoever, arising out of or in respect of or in derogation of***

any order, decision, determination, direction or finding which any person, authority or tribunal is empowered to make or issue under any written law:

(Emphasis added)

In view of the aforesaid section 23, a court exercising original civil jurisdiction is not empowered to entertain or to enter decree or make any order in any action for a declaration of a right or status upon any ground whatsoever. This position has been upheld in many cases including that of:

Perera v People's Bank [78 NLR 231];

Ceylon State Mortgage Bank v Ranasinghe [CA 1980 2 SLR pg. 11];

Kularatne v Gunapala Perera [CALA 546/2002 CA Mts. 24.03.2006]

Admittedly, the case at hand had been filed to obtain a declaration declaring that the defendant-appellant is not entitled to impose a surcharge of Rs.289,683.63 on the plaintiff-respondent. The said relief prayed for in the plaint dated 20th February 1992 is quoted herein below for easy reference and it reads thus:

“18. (අ) ඊනියා වී තොග උාණතාවයක් සඳහායයි සඳහන් කරමින් පැමිණිලිකරුගෙන් වී අලෙවි මණ්ඩලය රු.289683.63 ක මුදලක් අයකර ගැනීමට නීතිමය අයිතියක් හෝ නිමිකමක් නැතිබවට තීන්දු ප්‍රකාශයක් ලබාදෙන ලෙසත්”.

On the face of the aforesaid relief, it is clear that the plaintiff has sought to have a declaration as to a right or status as mentioned in Section 23 of the Interpretation Ordinance. As referred to above in this judgment, the said section 23 of the Interpretation Ordinance prevents a person seeking for a declaration of a right or status, to file action against a person, authority or tribunal which empowers to make any order decision determination direction or finding under any written law.

Upon considering the aforesaid provision in law and the authorities referred to above, it is clear that the learned district judge should not have entertained this action since the plaintiff has prayed for a declaration as to a status. Therefore, it is seen that he has misdirected himself in answering issue No.31 affirmatively. Indeed, he should have considered the issue 31 as a preliminary issue of Law and decided the case at an early stage.

In the circumstances, it is my view that the learned district Judge had no jurisdiction to allow the plaintiff-respondent to have and maintain this action and accordingly he should have dismissed this action. Hence, it is wrong to have decided the case in favour of the plaintiff-respondent. For the aforesaid reasons the judgment dated 30.07.1998 is set aside.

In the petition of appeal, the appellant has also prayed that it be granted the relief prayed for in the answer filed in the district court. The said relief is to recover Rs.289,683.63 from the plaintiff with the interests accrued thereto. In evidence it was admitted by a witness for the plaintiff

namely Percy De Silva Ranasinghe that part of the said claim has already been recovered from the salary paid to the plaintiff. (vide proceedings at page 367 of the appeal brief) Therefore, it is wrong to claim such an amount in the answer without deducting the money that the defendant had already recovered from the salary of the plaintiff.

Moreover, it is in evidence that the manner in which the aforesaid Rs.289,683.63 was calculated had been on a random check of the stocks in the stores of the defendant Paddy Marketing Board. This particular evidence had been given in answer to the questions posed by the Court. (vide proceedings at page 176 of the appeal brief). Therefore, the basis upon which the said Rs.289,683.63 was calculated is not acceptable and is not accurate as well. Therefore, I am not inclined to grant the relief namely to recover Rs.289,683.63 from the plaintiff that has been prayed for in the answer filed in the district court though it is one of the reliefs prayed for in the petition of appeal.

For the aforesaid reasons, this appeal is partly allowed. No costs.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

AKN