

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRILANKA

Abekoon Jalath Pathiranage
Karunawathie,
Dematapelassa,
Kiri Ibbanwewa.

Plaintiff

C A 1364 / 2000 (F)
D.C. Embilipitiya 3985 / L

Vs.

Suduhakuruge Methoris,
Dematapelassa,
Kiri Ibbanwewa.

Defendant

NOW BETWEEN

Abekoon Jalath Pathiranage
Karunawathie,
Dematapelassa,
Kiri Ibbanwewa.

Plaintiff Appellant

Vs.

Suduhakuruge Methoris,
Dematapelassa,
Kiri Ibbanwewa.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Anuruddha Dharmaratne with Indika
Jayaweera for the Plaintiff Appellant
P.P.Gunasena for the Defendant Respondent

ARGUED ON : 06.12.2013

DECIDED ON : 17.02.2014

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action in the District Court of Embilipitiya praying for a declaration of title and to eject the Defendant Respondent (hereinafter referred to as the Respondent) from the land described in the 2nd and 3rd schedules to the plaint. The Respondent prayed for a dismissal of the Appellants' action and a judgment as prayed for in the answer. The case proceeded to trial upon 22 issues. After trial the learned Additional District Judge dismissed the Appellants' action as well as the Respondent's claim in reconvention with costs. Being aggrieved by the said judgment dated 21.09.2000 the Appellant has preferred the instant appeal to this court.

The learned Counsel for the Appellant contended that the learned Additional District Judge has not answered the issues raised by the parties.

I have perused the proceedings of the said case and the judgment. The Appellant and the Respondent both have raised issues. The learned Additional District Judge has not answered the said issues. No doubt that the said judgment of the learned Additional District Judge is not in conformity with the requisites of Section 187 of the Civil Procedure Code.

This Court has abundantly stressed that the judgments should be in compliance with the provisions contained in Section 187 of the Civil Procedure Code. When writing a judgment the trial judge should safely consider the points for determination and should record his decision thereon. It must be born in mind of the trial judge that the issues which have been accepted by him should not be left unanswered. He is bound by a legal duty under section 187 of the Civil Procedure Code to deliver a proper and complete judgment answering the issues raised at the trial.

Section 187 of the Civil Procedure Code stipulates that: - "The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision." It is sad to note that in his judgment the learned District judge has not stated the points for determination and the decision thereon.

In the case of *Dona Lucihamy Vs Ciciliyanahamy* 59 NLR 214 it was held that "Bare answers, without reasons, to issues or points of contest raised in a trial are not a compliance with the requirements of section 187 of the Civil Procedure Code." In the case of *Warnakula Vs. Ramani Jayawardane* [1990] 1 SLR 206 it was held that "Bare answers to issues without reasons are not in compliance with the requirements of Section 187 of the Civil Procedure Code. The evidence germane to each issue must be reviewed or examined. The judge must

evaluate and consider the totality of the evidence. Giving a short summary of the evidence of the parties and witnesses and stating that he prefers to accept the evidence of one party without giving reasons are insufficient.”

Hence I am of the view that the failure of the learned trial judge to state in his judgment the points for determination and to answer them is in violation of statutory provisions contained in the Civil Procedure Code.

Therefore I set aside the judgment and decree of the learned Additional District Judge dated 21.09.2000 and allow the prayer (a) of the petition of appeal of the Appellant without cost. I accordingly order a re-trial. The Registrar of this court is directed to send the main case record to the District Court of Embilipitiya. The learned District Judge of Embilipitiya is directed to hear and conclude the case expeditiously.

Re-trial ordered.

Judge of the Court of Appeal