

203/99(f)

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

Nuwara Eliya Bankers,  
No.33, Lawson Street,  
Nuwaraeliya.

**Defendant-Appellant**

**C.A. Case No:- 203/99(F)**

**D.C.Nuwaraeliya Case No:-629/M**

**V.**

R.M.Punchi Banda,  
Aluthwatta, Haggala.

**Plaintiff-Respondent**

**Before:- H.N.J.Perera, J.**

**Counsel:-Athula Perera with Chathurani De Silva for the Defendant  
Appellant**

**Sandamal Rajapakshe with Chitrananda Liyanage for the  
Plaintiff-Respondent**

**Argued On:-28.03.2014**

**Written Submissions:-05.05.2014/11.06.2014**

**Decided On:-18.05.2015**

**H.N.J.Perera, J.**

The plaintiff-respondent instituted action in the District Court of Nuwaraeliya against the defendant-appellant to recover the jewellery pawned or Rs 8000/- and costs.

The defendant-appellant filed answer denying the averments in the plaint and amongst the other matters, specifically stated that Nuwara Eliya Bankers is not a legal person and that real parties are not made parties to this action and sought a dismissal of the plaintiff's action.

The plaintiff-respondent in his plaint alleged that on 06.08.1989 he has pawned certain gold jewelleryes (a chain and a Panchaudaya) with the defendant-appellant and obtained Rs.2000/-and when he wanted to settle the said sum in October 1989 he had been informed by the defendant-appellant that some other party has settled the money and had obtained the jewellery from the defendant-appellant.

The plaintiff-respondent further pleaded that he has spent Rs 8000/- to purchase the said jewellery and though demanded the defendant-appellant was unable to pay the said sum and or hand over the jewellery to the plaintiff-respondent. The plaintiff-respondent instituted the present action to recover Rs.8000/- from the defendant-appellant.

After trial the learned District Judge delivered judgment on 12.02.1999 granting the reliefs as prayed for by the plaintiff-respondent. Aggrieved by the said judgment of the learned District Judge the defendant-appellant had preferred this appeal to this court.

At the appeal the Counsel for the defendant-appellant has confined his submissions to two main issues in this case. Firstly whether the Nuwera Eliya Bankers is a legal person? And secondly if not can the plaintiff-respondent have and maintain this action against the defendant-appellant?

The defendant-appellant at the trial had produced the document marked V1, the Business Registration Certificate issued under the Business Names Ordinance. It is evident that the Nuwara Eliya Bankers is a partnership and Rengasamy Govindan Moorthi and Weereappan Athimulam are the partners of the said business. The present action has been filed against the Nuwara Eliya Bankers and not against them. There is no dispute between the parties that Nuwara Eliya Bankers is not a legal or juristic person. It was the contention of the Counsel for the defendant-appellant that the conclusion of the learned District Judge that, a business is a legal person is not correct and not according to law.

It is further submitted on behalf of the defendant-appellant that if the plaintiff-respondent is seeking to sue the defendant, the plaintiff-respondent should name the partners of the Nuwara Eliya Bankers as defendant-respondents in the present case. On an examination of the evidence led in this case it is apparent that the defendant-appellant Bank comprised of two partners.

Weeramantry on Contract Vol.(01) page 542-

“Partnerships are not juristic persons and are not recognised by our law as separate entities. It follows that partnership cannot hold property in the partnership name nor can they sue or be sued in the partnership name. The partnership is no more than a collection of separate individuals and these separate individuals would be the owners of the property of the partnership. These separate

individuals must be the plaintiffs or the defendants in any action by or against the partnership.”

H.W.Thambiah, Q.C. in the Principles of Ceylon Law at page 546 states:-

“In England, in view of the statutory provisions as action can be brought in the firms’ s name, but in Ceylon if a partnership has to be sued, the action should be brought against all its members.”

In the case of Suppiah V. Paliahpillai 14 N.L.R 392it was held that all the partners of the firm should have joined in the action. This is so because the plaintiff-respondent has no right to pick to sue from the partnership.

In Oretra Enterprises & Others V. Wijekoon [2003] 3 Sri L.R 1, it was held that:-

- (1)Partnerships are not juristic persons and are not recognised by our law as separate entities.
- (2).....
- (3).....In Sri Lanka if a partnership has to be sued, the action should be brought against all its members.

In the present case the plaintiff-respondent has failed to make any of the partners of the Nuwara Eliya Bankers parties to this action. The plaintiff-respondent has instead filed the present action against the Nuwara Eliya Bankers which is not a legal or juristic person.

In the present case it is not disputed that the plaintiff-respondent had pawned the jewellery to the defendant and when the plaintiff-respondent endeavoured to redeem the said jewelleries the defendant-appellant had refused to do so. The defendant-

appellant at the trial had produced the document marked V1, and in view of the said document it is apparent that the said defendant Bank comprised of two partners. The proxy tendered by the defendant-appellant was signed by the very same partners who's names have been mentioned in the document marked V1.

It cannot be said that the naming of the Nuwara Eliya Bankers as the defendant has misled the parties on the question of identity of persons intended to be sued. However the persons legally liable to compensate the plaintiff-respondent for the loss sustained by him had not been named and proved. In the circumstances it is my view in fairness to the plaintiff-respondent in this case I would set aside the judgment of the learned District Judge and sent the case back to the District Court for a trial de novo with the right to amend the plaint if the plaintiff-respondent so desires. I make no order as to costs.

Appeal allowed.

Case sent back for trial de novo with the right to amend the plaint.

**JUDGE OF THE COURT OF APPEAL**