

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

In the matter of an appeal under
Sec. 755(3) of the Civil Procedure
Code.

C.A. Case No. 1135/99(F)

D.C. Kurunegala

Case No. 4094/L

1. M.A.D. Piyasena alias

P. Don Marasinghe.

2. Sarath Marasinghe

3. Kanthi Perera

All of No. 96/8, North Lake

Road, Kurunegala.

PLAINTIFFS

Vs.

Salpadoru Tholkamudalige

Arthur Hemasiri Perera

No.8, Ananda Road,

Melber Place, Nugegoda.

DEFENDANT

AND BETWEEN

1. M.A.D. Piyasena alias

P. Don Marasinghe of

96/8, North Lake

Road, Kurunegala.

1st PLAINTIFF/APPELLANT

Vs.

Salpadoru Tholkamudalige

Arthur Hemasiri Perera

No.8, Ananda Road,

Melber Place, Nugegoda.

DEFENDANT/RESPONDENT

2. Sarath Marasinghe

3. Kanthi Perera Both of No. 96/8,
North Lake Road, Kurunegala.

2nd & 3rd PLAINTIFF/

RESPONDERNT

BEFORE : P.W.D.C. JAYATHILAKE, J

COUNSEL : W.Dayaratne P C with S. De Zoysa

For the Plaintiff Appellant.

J.C. Boange for the 1st Defendant

Respondent.

ARGUED ON : 21.01.2015

DECIDED ON : 22.07.2015

P.W.D.C. Jayathilake, J

The Plaintiff Appellant has instituted this action seeking Inter alia, a declaration of title and ejectment of the Defendant Respondent from the land described in the 2nd schedule to the plaint. The Plaintiffs in their plaint have stated that they have acquired the prescriptive title to the land described in the 1st schedule to the plaint. The extent of the land described in the 1st schedule is 2 roods and 25 perches while extent of the land described in 2nd schedule is 2 roods and 6 perches. It has been stated that the defendant's started dispute for their rights to the land described in 2nd schedule from the month of February 1990, claiming that he has a deed for the said land. The defendant has filed his answer stating that he has acquired the prescriptive title to the land in dispute by undisturbed and uninterrupted possession for a long period. He has prayed for dismissal of the plaintiff's case and declaration for his title to the land. But the defendant has not pleaded title on any deed in order to claim the title of the land. The plaint has been filed on 4th March 1992 and answered on 20th August 1997. The case had been taken up for trial on 25.08.1998 and issues had been framed on that day. When the case had been taken up for further

trial on 30.09.1999 the plaintiffs were not ready for the trial. Even an application for a postponement made for the plaintiff's is not recorded. The plaintiff had been dismissed for the reason that plaintiffs were not ready for the trial. It has been recorded that the defendant had been called to give evidence treating his claim in reconvention as a plaintiff. The evidence of the defendant had been led on that day and again on a subsequent day, namely, 30th September 1999. The judgment was reserved for 01.1.1999. The judgment had been pronounced on the day reserved for it, granting all reliefs claimed in reconvention. This is an appeal filed by the Plaintiff Appellant seeking to set aside the judgment of learned District Judge dated 01.11.1999.

There are six issues raised for the defendant at the commencement of the trial. The issue No.09 which is the first for the defendant was that whether the title of lot No.14 and 13 P of Plan No. 2603 A had been devolved to the defendants on deeds. The last issue No.14 was whether the plaintiff be dismissed if the above issues had been answered affirmatively. Even though the defendant had neither pleaded any deed in his answer nor he has listed any document to be produced in the trial, the defendant has marked and produced four deeds in his evidence. When his evidence was being led the objection raised for the plaintiff for marking those deeds has been rejected inviting the attention to prayer B of the answer. The prayer B of the answer is to make a declaration

that the land depicted in Plan No.738/96 should belong to the defendant. The learned counsel for the appellant has raised the following points as the grounds of appeal.

- a. The defendant has failed to prove his title with sufficient evidence.
- b. The learned District Judge has not answered any of the issues.
- c. The Court has granted reliefs which are not prayed for.

It appears that the answer of the defendant is a very vague one. In paragraphs 1,2,3 and 5 the defendant has denied all averments of the plaint except the jurisdiction of the court. In paragraph 4 it is stated that the defendant has been placed in the possession by the Primary Court. In paragraph 6, it is stated that the land owned by the defendant has been possessed by him uninterrupted for a long time. There is no land described either in schedule to the answer or in any of the averments.

It is the general rule that the case enunciated must reasonably accord with the party's pleadings. The explanation 2 of Sec 150 of the Civil Procedure Code is as follows. *"The case enunciated must reasonably accord with the party's pleading, i.e, Plaint or Answer, as the case may be. And no party can be allowed to make at the trial, a case materially different from that which he has placed on record, and which his opponent is prepared to meet. And the facts proposed to be established must in the whole amount to so much of the*

material part of his case as is not admitted in his opponent's pleadings". The answer of the Defendant had been filed on 20th August 1997 as per journal entry No.32. There is no mention either about a reconvention or a replication. The Sec. 75 (e) provides the requisites of an answer which contains a claim in reconvention. The said section is as follows "When the defendant sets up a claim in reconvention the answer must contain a plain and concise statement of the fact constituting the ground of such claim which the defendant makes in reconvention. A claim in reconvention duly set up in the answer shall have the same effect as a plaint in a cross action so as to enable the court to pronounce a final judgment in the same action both on the original and on the cross claim....."

Filing of a replication is an exception to the general rule that no pleadings after the answer except by order of court on special motion. As it appears entire character of the case has changed with the dismissal of the plaint on the ground that the plaintiff was not ready for the trial on the trial date. A claim in reconvention which was not actually contained in the answer had been taken up for trial. When considering Sec. 75 e, it is clear that a claim in reconvention shall duly set up in the answer and shall have the same effect as a plaint. Therefore I hold that a mere prayer in an answer cannot be treated as a claim in reconvention. Therefore the District Judge is erroneous in proceeding for the

trial on a claim in reconvention after the dismissal of plaintiff. As such this court sets aside the judgment and the decree entered after the said trial proceedings. This court decides that the proceedings of this case had ended with the dismissal of the plaintiff.

Appeal allowed.

The judgment and the decree

Set aside

The dismissal of the Plaintiff stands.

JUDGE OF THE COURT OF APPEAL