

C.A.405/99(F)

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

Merrena Colvin De Soyza,  
N0.69, D.S.Senanayake Mawatha,  
Colombo 8.

**Plaintiff**

**C.A.Case No:- 405/99(F)**

**D.C.Colombo Case No:-14618/L**

**V.**

Kandenkattal Ayappan Kumaran,  
No. 181/31, Obeysekerapura,  
Rajagiriya.

**Defendant**

**AND NOW BETWEEN**

Kandenkattal Ayappan Kumaran  
181/31, Obeysekerapura,  
Rajagiriya.

**Defendant-Appellant**

**V.**

Merrenna Colvin De Soysa,  
No.69, D.S.Senanayake Mawatha  
Colombo 8. (deceased)

**Plaintiff-Respondent**

1a. Merrenna Priyamanthi Pathmini  
De Soyza

1b. Merrenna Manula De Soyza  
Both of No.69, D.S.Senanayake  
Mawatha, Colombo 8.

**1a & 1b Substituted-Plaintiff  
Respondents.**

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

**Counsel:-M.C.Jayaratne with M.D.J.Bandara for the Defendant-  
Appellant**

**Dhammika Welagedera for the Substituted-Plaintiff-  
Respondents**

**Argued On:-08.11.2013**

**Written Submissions:-01.01.2014/20.01.2014**

**Decided On:-09.11.2015**

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

The original plaintiff-respondent instituted action in the District Court of Colombo against the defendant-appellant seeking a declaration that he is the owner of the premises described in the schedule to the plaint and for the ejectment of the defendant-appellant, agents, servants and all others holding under the defendant-appellant from the said premises and for damages and costs.

The defendant-appellant in his answer while denying several averments of the plaint, took up the position inter alia that he is a tenant under the original plaintiff-respondent and/ or under the Commissioner of National Housing and sought a dismissal of the plaint.

After trial the learned trial Judge delivered judgment on 04.05.1999 in favour of the plaintiff-respondents as prayed for in paragraph a of the plaint and granting damages Rs 500/- per month from the date of the judgment until possession is restored to the plaintiff-respondents and costs. Aggrieved by the said judgment of the learned trial Judge the defendant-appellant had preferred this appeal to this court.

When this matter was taken up for argument before this court the court brought it to the notice of the Counsel for the plaintiff-respondent that the court is of the view that there is no proper judgment delivered by the learned trial Judge as contemplated in section 187 of the Civil Procedure Code. Although the learned trial Judge had proceeded to answer issues in this case, there is no proper analysis of the evidence led by the parties and the learned trial judge has failed to properly set out the reasons for the decision she has arrived at .

It was contended on behalf of the plaintiff-respondents although the additional District Judge has not given 'lengthy' reasoning in the body of the judgment, the judgment in fact gives the relevant reasoning for

arrival at the judgment, when answering the individual issues. It was further submitted that answering the relevant issues the learned trial Judge has gone to give the reasons for the same.

On perusal of the said judgment it is clearly seen that the learned trial Judge had failed to analyse the evidence led at the trial in this case and to give reasons for the conclusion she had arrived at the judgment. The pages 1 to 2 merely state the relief prayed for by the plaintiff-respondent and the defendant-appellant and the issues raised by the parties to this case. Thereafter pages 3,4 and 5 clearly contains a narration of the evidence that had been led by the parties and also refers to the submissions made by the Counsels of the parties by way of written submissions in this case. And the learned trial judge thereafter simply states that after considering the evidence led by the parties and the written submissions that she proceeds to answer the issues as follows.

In Warnakula V. Ramani Jayawardena it was held that bare answers to issues without reasons are not in compliance with the requirement 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.

It must be stated that bare answers without reasons to issues are not in compliance with the requirements of section 187 of the Civil Procedure Code. The evidence germane to each issue has not been reviewed or discussed.

In Dona Lucihamy V. Ciciliyanahamy 59 N.L.R 214 it was held 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. It was further held that failure to examine the title of

each party in a partition action vitiates the decree if it has prejudiced the substantial rights of the parties.

The main issue in this case is whether the plaintiff is the owner of the premises described in the schedule to the plaint. The defendant states that the said premises belongs to the Commissioner of National Housing and he is in possession of the same as a tenant and pays rent to the said Commissioner. There is no admission by the parties as to the ownership of the said premises. Issue No.1 is whether the plaintiff is the owner of the premises described in the 3<sup>rd</sup> schedule to the plaint. In *Luwis Singho and others V. Ponnampereuma* [1996] 2 Sri.L.R 320 it was held that :-

(1) Actions for declaration of title and ejectment and vindicatory actions are brought for the same purpose of recovery of property. In *Rei-vindicatio* action the cause of action is based on the sole ground of the right of ownership, in such an action proof is required that:-

(1) The plaintiff is the owner of the land in question. i.e he has the dominium

(2) That the land is in the possession of the defendant.

The moment the title of the plaintiff is admitted or proved the right to possess it, is presumed.

In *D.A Wanigarate V. Juwanis Appuhamy* 65 N.L.R 168, it was held that in an action *rei-vindicatio* the plaintiff should set out his title on the basis on which he claims a declaration of title to the land and must in court prove that title against the defendant in the action. The defendant in *rei-vindicatio* action need not prove anything, still less, his own title. The plaintiff cannot ask for a declaration of title in his favour merely on the strength that the defendant's title is poor or not established. The plaintiff must prove and establish his title.

Therefore it is imperative in this case for the plaintiff to prove that the plaintiff is the owner of the land in suit.

The learned trial Judge has nowhere in her judgment stated that the defendant had admitted the plaintiff's title. Nowhere does she state that it has been proved by the plaintiff. The learned trial Judge has not referred to the paper title of the plaintiff to the said land. The plaintiff had marked certain deeds to prove his title to the land. The learned trial Judge has not referred to any of the said documents, and analysed the evidence led in this case to find out whether in fact the plaintiff had proved his title to the said land. The learned trial Judge has merely answered the issue NO.1 in plaintiff's favour and stated that the 2<sup>nd</sup> witness who gave evidence on behalf of the plaintiff had superimposed the earlier plan, and that the defendant's lot which is in extent of 7.1 perches is also included in the said plan. There are altogether 13 issues raised by the parties at the trial. The learned trial Judge has also failed to answer issue No. 12 and 13.

The learned trial Judge also has not referred to any documents tendered by the defendant in this case. In answer to issue No.11 it is stated that the defendant has failed to establish that the said premises has been acquired by the Commissioner of National Housing .I find that the learned trial Judge has failed to consider the totality of the evidence led on behalf of the defendant-appellant.

Section 187 of the Civil Procedure Code is in the following terms:-

"The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision."

The judgment of the learned trial Judge does not conform to these requisites.

I am of the opinion that the failure of the trial Judge to examine the title of the plaintiff and the failure to consider whether the defendant had a legal right to possess the said land has prejudiced the substantial rights of the parties. In view of the above reasons, I would allow the appeal of the defendant-appellant and set aside the judgment of the learned Additional District Judge dated 04.05.1999 and direct a trial de novo. The Learned District Judge of Colombo is directed to hear and conclude this action as expeditiously as possible. Each party must bear the costs both here and in the court below.

Appeal allowed.

**JUDGE OF THE COURT OF APPEAL**