

C.A 54/99 (f)

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

Seeni Mohamadu Mohamudu
Abubakar
1st Cross Street, Otammawedi,
Valachchenai.

Plaintiff-Appellant

C.A. Case No:-54/99(F)

D.C.Colombo Case No:-15885/L

V.

Bank of Ceylon
Central Office,
York Street, Colombo 11.

Defendant-Respondent

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

**Counsel:- Faiz Musthapha P.C. with Ashiq Hassim for the Plaintiff-
Appellant**

Neil Unambuwa D.S.G. for the Defendant-Respondent

Argued On:-20.02.2014/03.04.2014

Written Submissions:-19.05.2014/03.06.2014

Decided On:- 16.02.2016

H.N.J.Perera, J.

The plaintiff-appellant instituted action in the District Court of Colombo against the defendant-respondent praying inter alia-

- a) For a declaration that Deed No 77 dated 29.03.1990 attested by Suranganie de Silva Notary Public was a nullity and of no force or avail in law;
- b) For a declaration that the plaintiff-appellant owed the defendant-respondent a sum of Rs.735,000/-;

Alternatively

- c) For an order against the defendant-respondent, to pay to the plaintiff-appellant a sum of Rs.965,000/- together with interest thereon.

The position of the plaintiff-appellant is that he became the owner of the land described in the schedule to the plaint in terms of Deed No. 4747 dated 02.07.1980 attested by A.E.Saminathan Notary Public. Thereafter on the requests of the representatives of the defendant-respondent agreed to construct a building according to the approved plan of the defendant-respondent. For this purpose the plaintiff-appellant made an application on 12.08.1980 to the defendant-respondent for a loan of Rs. 120,000/-in two installments from the defendant-Bank for the said construction.

Plaintiff-appellant further states that the building was constructed in 1981 and was given on rent to the defendant-respondent to establish the Valachchenai branch of the defendant-Bank. However due to the terrorists activities that were prevalent at that time in the Baticoloa District, the plaintiff-appellant's business had been badly affected and he had been unable to raise the money to pay the said outstanding loan. Consequently, the defendant-respondent instituted a case in the District

Court of Baticola for the recovery of the said loan amounting to a sum of Rs 46,072/- and interest thereon was claimed by the defendant-respondent as being due and owing to the defendant-respondent from the plaintiff-appellant. The plaintiff-appellant made several requests to the defendant-respondent for an extension of the loan payment period and also sought an increase in the rental that was being paid to the plaintiff-appellant by the defendant-respondent. The defendant-respondent had refused to accede to the said requests and thereupon the Manager of the defendant-Bank had advised the plaintiff-appellant to make a formal request to the defendant-respondent for the sale of the said property to the defendant-respondent.

Accordingly the plaintiff-appellant, in or about June 1986 made an offer to the defendant-respondent to purchase the said premises for a reasonable price in terms of the prevailing market price and grant him some relief.

Subsequently the defendant-respondent purchased the premises for Rs. 735,000/- by Deed NO. 77 on 29.03.1990 attested by Suranganie de Silva Notary Public. The plaintiff-appellant states that the Rs.735,000/- is inclusive of Rs.155,000/- the money he owed to the defendant-respondent. He states further that at the time of the execution of the said deed the value of the premises was Rs. 1,700.000/- and therefore it is more than half of the price he sold.

The plaintiff-appellant states that in the circumstances, according to the principle of "laesio enormis" the said deed executed on 29.03.1990 bearing No. 77 is void.

The plaintiff-appellant further states that he obtained an estimate from Mr. S.E.Jayarajah who is an Engineer and thus the plaintiff-appellant made a demand for the payment of Rs.965,000/- which was rejected by the defendant-respondent. In the circumstances the plaintiff-appellant

states that a cause of action has accrued to him on the basis of “laesio enormis” and “undue enrichment” to recover a sum of Rs. 965,000/-from the defendant-respondent.

The defendant-respondent filed its answer and denied the claim of the plaintiff-appellant. The defendant-respondent admitted the fact that the plaintiff-appellant owed moneys to the defendant-respondent on loan agreement and that the plaintiff-appellant has defaulted to pay the due amounts as per the contract. However the defendant-respondent further admits that the plaintiff-appellant was the owner of the premises and that the Member of Parliament of the area and the then representatives of the defendant-respondent have made a suggestion to construct a building on the said land belonging to the plaintiff-appellant.

It was the position of the defendant-respondent that the plaintiff-appellant was a customer of the defendant-respondent who had obtained banking facilities and defaulted to pay several installments. Consequently the defendant-respondent was compelled to institute action to recover the due amounts from the plaintiff-appellant in the District Court of Baticoloa.

The defendant-respondent states further that the plaintiff-appellant invited the defendant-respondent to purchase the premises and the said proposal was considered by the defendant-respondent. Consequently the defendant-respondent purchased the property at a reasonable price offered by the plaintiff-appellant on his own initiative.

The defendant-respondent in his answer has also stated that in any event if the learned trial Judge holds in favour of the plaintiff-appellant then that the defendant-respondent is entitled to make a claim for all expenditure incurred in the purchase of the said property, Stamp Duty and the sum of Rs. 735,000/-. Further that the plaintiff-appellant has deliberately and by design caused the defendant-respondent to believe

that he was selling the property for the proper price and thus he is estopped from denying same.

Accordingly, the defendant-respondent has prayed if the relief is granted to the plaintiff-appellant as per his prayer that the defendant-respondent be paid a sum of Rs.735,000/- and all expenditure incurred for the purchase of the property, Stamp Duty, the money spent on the execution of the deed, and the interest accrued to the said sums of money from 01.04.1990 at the rate of 20% and thereafter the interest component from the date of decree until the total payment of the amount to be paid to the defendant-respondent.

When the said action came up for trial before the District Court on 20.09.1993 4 admissions and 10 Issues raised by the parties were recorded by court. Oral evidence of the plaintiff and witness S.E.Jeyarajah –Civil Engineer who prepared document P4 was led on behalf of the plaintiff-appellant P1 to P4 were produced and marked through them.

The defendant-respondent led the evidence of A.L.M Sabair (Assessor), S.Dharmalingam (Ast.Manager –Bank of Ceylon) Suranganie de Silva (Notary Public) and K.I.Ranarajah (Chief Manager- Bank for Ceylon).Documents V1 to V9 was produced and marked through them on behalf of the defendant-respondent.

The learned Additional District Judge after trial delivered judgment on 27.11.1998 and dismissed the plaint with costs. Being aggrieved by the said judgment of the learned trial Judge the plaintiff-appellant has preferred this appeal to this court.

The main contention of the learned President's Counsel for the plaintiff-appellant was that the judgment of the learned Additional District Judge

was not in conformity with the imperative provisions of section 187 of the Civil Procedure Code.

It was the contention of the learned President's Counsel for the plaintiff-appellant that the learned Additional District Judge has failed to evaluate and consider the totality of the evidence led at the trial and has failed to give reasons for her decision. On the whole the learned Additional District Judge has failed in her legal duty to analyze the evidence before answering the issues.

It is apparent that the judgment is in effect a summary of the evidence led at the trial. Learned President's Counsel for the plaintiff-appellant drew the attention of this court to the fact that the learned trial Judge has completely failed to consider the evidence of the witness S.E,Jeyarajah –Civil Engineer who gave evidence on behalf of the plaintiff-appellant. On perusal of the said judgment it is clearly seen that the learned trial Judge has merely given a narration of the evidence given by the said witness. The learned trial Judge has clearly failed to evaluate and analyze the evidence given by the said witness.

The said judgment appears at pages 120 to 128 and pages 120 to 126 contains mere narration of facts without any reasoning whatsoever whilst at page 127 the learned trial Judge makes cursory reference to some of the issues and thereafter at page 128 proceeds to answer the 10 issues framed for adjudication, merely stating Yes and No, without embodying in the judgment as to how these reasons were arrived at.

The witness S.E.Jayarajah has been summoned to give evidence on behalf of the plaintiff-appellant in order to prove the real value of the said property at the time when the said transaction took place between the plaintiff-appellant and the defendant-respondent. The plaintiff as well as this witness has given evidence in detail as to the value of the said property at the time of the said transaction in order to prove that the

said property has been sold to the defendant-respondent at a very low value than the real value of the said property at that time.

The defendant-respondent too has led the evidence of 4 witnesses and marked a number of document to prove the defendant-respondents case. The evidence given by the said witnesses too has not been evaluated and considered by the learned trial Judge in her judgment.

It was submitted on behalf of the plaintiff-appellant that the learned trial Judge's failure to consider and evaluate and pronounce a finding on the evidence given by the said witnesses has adversely affected the rights of the plaintiff-appellant or has caused prejudice to the plaintiff appellant.

Section 187 of the Civil Procedure Code states as follows:-

"The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision; and the opinions of the assessors (if any) shall be prefixed to the judgment and signed by the assessors respectively."

In Warnakula V. Ramani Jayawardene [1990] 1 Sri.L.R 206, it was held that:-

"The learned District Judge has failed to evaluate and consider the totality of the evidence. His judgment was not in compliance of section 187 of the Civil Procedure Code. He has given a very short summary of the evidence of the parties and witnesses and without giving reasons he had stated that he prefers to accept the evidence of the defendant-respondent as it was satisfactory and thereafter proceeded to answer the issues."

In this case the learned trial Judge has clearly failed to consider the evidence of the witnesses led at the trial. It is quite clear that the learned trial Judge has made the same mistakes in the instant case as those made by the learned District Judge in Warnakula V. Ramani Jayawardene. No

reasons have been adduced to the answers given to the 10 issues, anywhere in the said judgment.

In the case of *Dona Lucihamy V. Ciciliyanahamy* 59 N.L.R 214, it was held:-

“The evidence germane to each issue has not been reviewed or discussed. No reasons precede or follow the answers which are mostly “Yes” or “No” or “does not arise”. Such a record has not disposed of the matters which the court had to decide. Bare answers to issues or points of contest-whatever may be the name given to them- are insufficient unless all matters which arise for decision under each head are examined.”

The failure to evaluate evidence is an obvious error on the part of the trial Judge. (*Victor V. Cyril De Silva* 1998 (1) S.L.R 41.)

The judgment of the learned Additional District Judge does not conform to those requisites. After stating the case of each party and giving a narration of the evidence given by the parties and their witnesses in this case, the learned Additional District Judge in one paragraph consisting of 13 lines has concluded that after considering the documents and evidence of both parties that she is of the view that the plaintiff has sold the said property to the defendant-respondent willingly. She has further held that the plaintiff-appellant has requested the defendant-Bank to purchase the said property for Rs.900,000/- and has agreed to sell the said property to the defendant-bank at the defendant Bank’s estimate at Rs.735,000/-. And as at the time of the said sale there were terrorist activities in the said area, there were no buyers available, and therefore the plaintiff-appellant is not entitled to have a declaration under the doctrine of “*laesio enormis*” to cancel the said deed of transfer.

In *Warnakula V. Ramani Jayawardene* it was further held that:-

“The Appellate Court should be in a position to glance through the answers given to the points of contest before examining the reasons for same, and should not be called upon to re-write the judgment of the original court to fill in the gaps by suggesting that no prejudice would be caused to the parties notwithstanding the bare answers to issues.”

This clearly cannot be said to be a “judgment” as contemplated in section 187 of the Civil Procedure Code. The judgment of the learned Additional District Judge does not conform to those requisites. I am of the opinion that the failure of the learned Additional District Judge to evaluate and examine evidence has prejudiced the substantial rights of the plaintiff-appellant and has occasioned a failure of justice.

In view of the above I am of the opinion that there is no necessity for this court to consider the other matters urged before this court by the learned President’s Counsel for the plaintiff-appellant in appeal. Therefore this appeal is allowed and the impugned judgment dated 27.11.1998 is set aside. The case is remitted to the District Court for trial de-novo. I make no order for costs.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL