

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

CALA No. 80/2005

A.K.M. Perera

D.C.Ratnapura No. 19910/Misc.

"Sirimedura" Kahawatta

Plaintiff Petitioner

Vs

National Gem & Jewellery Authority

No. 25, Galle Face Terrace

Colombo 3

Defendant Respondent

BEFORE Deepali Wijesundera J.,

M. M. A. Gaffoor J.,

COUNSEL T. Palliyaguru for the Petitioner

Manohara de Silva P.C., with Rajitha Hettiarachchi for the
Defendant Respondent

ARGUED ON: 12.01.2016

DECIDED ON 01.04.2016

Gaffoor J.,

This application, by way of Leave to Appeal has been lodged by the Plaintiff-Petitioner, under the provisions of LX of the Civil Procedure Code

against the order delivered on 25.05.2005 by the learned District Judge of Ratnapura, and the facts and circumstances which have given rise to this application are briefly as follows:

The Plaintiff instituted the present action by his plaint on 02.09.2004 against the Defendant in the District Court of Ratnapura, seeking inter alia a declaration that gem stone prospected by the Plaintiff was taken into custody by the Defendant is unlawful, for an Order of Court compelling the Defendant to handover the said gemstones to the Petitioner or in case of disposal the Plaintiff be paid the value of the gemstones and for an interim injunction and an enjoining order restraining the Defendant from handing over the said gemstones to any other third party until the conclusion of the action.

The Plaintiff has averred in his Plaint that he is the owner of the land morefully described in the schedule to the plaint and he obtained a license from the Defendant to prosper gemstones on the said land. During the course of the said gemming operation certain Rohana de Silva disputed the title to the land with the Plaintiff. As a result the license issued to the Plaintiff was revoked by the Defendant on 21.3.2001, after an inquiry.

During the course of the inquiry on 22.01.2001, certain gemstones prospected by the Plaintiff on the said land. Thereafter a person named Sri Bakmeedeniya also made a claim to the land on which the Plaintiff carried out gemming operation and applied for a license prospecting for gem stones. After the inquiry the Defendant by his letter dated 08.07.2003 which was marked as "P2" and annexed with the Plaint informed the Plaintiff that the land in question is being called 'ellewatte lhalakella' as alleged by the said Sri

Bakmeedeniya and if the Plaintiff failed to obtain from a competent court a declaration of title to the said land, a license would be issued to the said Sri Bakmeedeniya to prospect for gemstones, well knowing foregoing the Plaintiff did not prove the legal actions to assert his title to the land in dispute on which gemming operation was carried out by the Plaintiff.

Instead of ascertaining his title to the land in dispute the Plaintiff has invoked the jurisdiction of the District Court by way of filing plaint averring the pleadings for an interim injunction as abovementioned.

The Defendant has filed his objections stating that the Plaintiff ought to have resorted the judicial review from the High Court rather than filing this action and that the Plaintiff failed to obtain a declaratory Order regarding title to the Plaintiff to the land namely, Bandaragodella even after seizure of the gemstones. The outcome of the inquiry held by the Defendant revealed that the Plaintiff having obtained license to prospect for gemstones on the land of Bandaragodella has instead done mining operation on the land of 'ellewatte lhalakella' and secured the said gemstones therefrom and committed laches in bringing the present action in the District Court.

The learned District Judge, having examined the documents and perused the written submissions filed by both parties has delivered his Order on 25.02.2001, refusing the application of the Plaintiff for interim injunction.

The Counsel s for both parties filed their written submissions in this Court in that the counsel for the Plaintiff raised objections, that the Defendant filed his objection without an affidavit in support of the averments contained thereof and the Plaintiff has proved prima facie case against the Defendant and the

balance of convenience clearly lies in favour of the Plaintiff and therefore Leave to Appeal be granted and to set aside the order of the District Judge of Ratnapura dated 25.02.2005.

Counsel for the Defendant submitted that the Plaintiff has committed laches in bringing this action and failed to establish prima facie case before the learned District Judge and the main contention of the Plaintiff is that he has proved a prima facie case and the balance of convenience as required for the issue of interim injunction before the learned District Judge. It is trite law that the party who seeks relief of injunction must establish certain requirements as Justice Zosa stated in Felix Dias Bandaranayake – 1981 2 SLR 287, that prima facie, case balance of convenience is in favour of a party applying for the injunction and the conduct and dealings of the parties to be considered as it is equitable remedy.

Prima facie case means that a person seeking interim injunction must show that his legal right has been infringed and that he will probably succeed in establishing his right as stated by Thambiah J., in Subramaniam vs Sahabdeen - 1984 1 SLR 48-54, that the Plaintiff must establish that there is probability that he is entitled for relief prayed by him.

In Amarasekera vs Mitsui Co. Ltd and others -1993 1 SLR 22, Amerasinghe J., held :

“the learned District Judge should have been satisfied that the prima facie claim and reasonable prospect of success even in the light of the defences raised in the pleadings, objections and submissions of the Defendant. The present case is a declaratory action. Thus it is an

implication under the relevant provisions of National Gem & Jewellery Authority Act No. 50 of 1993, the Plaintiff must prove his title to the land in which mining operation being done by him in case of seizure or forfeiture of gemstones."

It is clear that immediately after the seizure of the gem stones prospected by the Defendant fairly and prudently advised the Plaintiff to file an action to vindicate his title to the land which is a sine qua non for the equitable relief of injunction. This observation could be seen in Karunadasa Rajapakse vs Podi Appuhamy 1989 1 SLR and Dingiri Mahathmaya and others – 2003 2 SLR 268.

Balance of convenience means factors of uncompensatable disadvantage or irreparable damage to either party that once the prima facie case is made out then the Court would consider whether the balance of convenience lies on the Plaintiff who seeks injunction held by Justice Soza in the case of Felix Dias Bandaranayake – Dingiri Mahatmaya and others 2003 2 SLR is as follows:

"By weighing the injury which the Defendant will suffer if the injunction is granted and he should ultimately turn out to be the victor against the injury which the Plaintiff will sustain if the injunctions were refused and then he should ultimately turn out to be victor."

In this circumstances, the Court would consider the extent of irreparable damages to the parties in the action. In other words, the purpose of granting injunction is to preserve the status quo of the property, and to prevent the infringement of lawful right of the Plaintiff. The court would always be in favour

of the Plaintiff in this situation. In the present case it could be seen that the gemstones prospected by the Plaintiff from an unauthorized land for him and thereby no any lawful right of the Plaintiff has been infringed.

Once the balance of convenience has been proved the Court would consider the equitable consideration which means the conduct and dealings of the parties encompassing waiver, laches and unclean hand of the person who seeks injunction, waiver by Plaintiff or acquiesces by him in the Defendants conduct would be a bar to granting of equitable remedy of injunction based on discretionary power of the conduct of laches of the Plaintiff may prevent granting of injunction held in Sithambaram vs Palaniappa 5 NLR 553, the Court would consider whether the applicant has invoked the jurisdiction of the Court with clean hand as stated in the cases of Ranjan vs Sellasamy 1994 2 SLR 377 – 384 and Pounce vs Ganegama 40 NLR 76.

In the present case it is admitted by the parties before the learned District Judge that the said gemstones prospected by the Plaintiff during the course of inquiry for the cancellation of the license on 22.2.2001, but before the proforma cancellation on 21.3.2001. It shows that the licence was in force until 21.03.2001. In this circumstance the proper action for the Plaintiff was a writ jurisdiction of the Court of Appeal as this matter falls in the list of the Central Government. It is observed in the cases of Jayasena vs Punchi Appuhamy and another 1980 2 SLR 43 and Weerasinghe vs Podi Mahathmaya and others 1994 3 SLR 230. Therefore the Plaintiff failed to invoke writ jurisdiction of the Court of Appeal in respect of the seizure or confiscation of the gemstones by the Defendant too.

Taking into consideration all these matters, it is my considered view that the learned District Judge was right in refusing the application for interim injunction filed Plaintiff in the District Court of Ratnapura.

In the circumstance I see no reason to interfere with the judgment that is impugned in this application. Accordingly, the application for Leave to Appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.,

I agree.

JUDGE OF THE COURT OF APPEAL