

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

Dewapurage Nandadasa Laktilaka
No. 294/04,
Kumaratunga Mawatha,
Matara

PLAINTIFF

C A No. **CA- 606/97 (F)**
D C Kalutara No. L/4216

-Vs-
Weerakkody Saldin Silva
"Yamuna Niwasa",
Karawaladuwa,
Waskaduwa

DEFENDANT

AND

Weerakkody Saldin Silva
"Yamuna Niwasa",
Karawaladuwa,
Waskaduwa

DEFENDANT-APPELLANT

-Vs-

Dewapurage Nandadasa Laktilaka
No. 294/4,
Kumaratunga Mawatha,

Matara

PLAINTIFF-RESPONDENT

AND NOW

- A. Eliyadura Siriyawathi Silva
- B. Weerakkody Wimaladasa Silva
- C. Weerakkody Priyanthi
Mangalika
- D. Weerakkody Gamini Jayaratne
Silva
- E. Yamuna Kanthi

All of

"Yamuna Niwasa",

Karawaladuwa,

Waskaduwa

**SUBSTITUTED-
DEFENDANT-APPELLANTS**

-Vs-

Shiral Virantha Laktilaka

No. 15,

Lakshapana Mawatha,

Jayanthipura,

Baththaramulla

**SUBSTITUTED-
PLAINTIFF-RESPONDENT**

**Before: Vijith K. Malalgoda PC J (P/CA) &
P. Padman Surasena J**

Counsel: Mahinda Nanayakkara with Aruna Jayathilake for the
Substituted Defendant Appellants

Mayura Gunawansa for the Substituted Plaintiff Respondent

Argued on: 2016-03-08

Decided on: 2016-05-11

JUDGMENT

P. Padman Surasena J

The plaintiff Respondent has filed action in the District Court of Kalutara in January 1994. After the conclusion of the trial, learned District Judge pronounced his judgment dated 1997-05-30 in favour of the Plaintiff Respondent. Defendant Appellant being dissatisfied, has lodged this appeal to this court against the judgment of the District Court.

Defendant Appellant in the prayers of his petition of appeal has sought from this court *inter alia*

- a) to set aside the judgment and decree entered in this case by the learned District Judge.
- b) to dismiss the Plaintiff Respondent`s action

Learned counsel for both parties having filed their written submissions at an earlier occasion, also filed additional written submissions in support of their respective positions after concluding their oral submissions on 2016-03-08.

It is the submission of the learned counsel for the Defendant Appellant,

- (i) that the action has been filed in terms of Roman Dutch Law and not in terms of Section 39(2) of the Debt Conciliation Ordinance No. 39 of 1941.
- (ii) that the action has been filed by the Plaintiff in the District Court of Kalutara in violation of section 39(2) of the Debt Conciliation Ordinance No. 39 of 1941, i.e. without making the payment of debt together with the interest thereon as ordered by the Debt Conciliation Board, and hence, the District Court cannot hear and

determine this matter for want of jurisdiction, which he terms as patent lack of jurisdiction.

- (iii) that the Plaintiff cannot vindicate his title to the property without complying with the order of the Debt Conciliation Board as the certificate issued by the Debt Conciliation Board becomes valid only when the Plaintiff complies with the said order.

In order to consider the above arguments advanced by the learned counsel for the Defendant Appellant, it is necessary at this stage to turn to Section 39(2) (a) of the Debt Conciliation Ordinance. That section is reproduced below.

"S. 39(1).....

(2) Where a certificate has been granted under this Ordinance in respect of a debt secured by a conditional transfer of immovable property and subsequent to the granting of that certificate an action is instituted in any court for the recovery of that property, the court-

- (a) may, notwithstanding that the title to that property has vested in the creditor in relation to that debt, make such appropriate orders as are necessary to reconvey title to, and possession of, that

property to the debtor, in relation to that debt, on the payment by the debtor of the debt together with the interest thereon in such instalments and within such period not exceeding ten years, as the court thinks fit; and

(b)"

Perusal of the plaint filed in this case reveals

- (i) that there has been proceedings before the Debt Conciliation Board in terms of the provisions of the Debt Conciliation Ordinance.
- (ii) that the Debt Conciliation Board after the inquiry has issued a certificate under Section 29 of the Ordinance, a copy of which has been annexed to the plaint.

Plaintiff Respondent in paragraph 10 of his plaint has also stated that he is prepared to pay the debt and the interest thereof to the Defendant Appellant at any time according to the terms and conditions ordered by court.

The Plaintiff Respondent in his Plaint has prayed for

- (i) a reconveyance of the property in dispute back to him from the Defendant Appellant.

- (ii) eviction of the Defendant Appellant and to retake the possession of the said property back to him.

It is evident from the above facts that the action filed by the Defendant Appellant is an action in terms of Section 39(2) (a) of the Debt Conciliation Ordinance. Further the granting of the reliefs sought by the Defendant Appellant in his prayers are well within the jurisdiction of the court in terms of Section 39(1) (2) (a) as it has specifically provided for the court to make such appropriate orders as are necessary to re-convey title to, and possession of that property to the debtor, in relation to that debt, on the payment by the debtor of the debt together with the interest thereon in such installments and within such period not exceeding 10 years as the court thinks fit.

Perusal of the issues and the admissions recorded which is at page 57 of the brief and the answers provided by the learned District Judge to these issues in his judgment show that all parties had treated this as an action in terms of section 39 (2) (a) of the Debt Conciliation Ordinance.

Perusal of the judgment of the learned District Judge, also shows that the reconveyance has been ordered subject to the condition that the Plaintiff Respondent pays back the debt to the Defendant Appellant.

For the foregoing reasons this court is of the view that there is no merit in the arguments advanced on behalf of the Defendant Appellant.

Hence, they cannot and should not succeed.

In these circumstances we affirm the judgment of the learned District Judge dated 1997-05-30 and dismiss this appeal with costs.

Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL