

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

Thilakaratne Kadanaarachchi
Pradeshiya Secretary
Pradeshiya Secretariate Office
Piliyandala.

C.A. No: 1039/97(F)

D.C. Panadura No:1252/M

Defendant-Appellant.

Ratnasiri Wijeseker aliays
Nanayakkarawasam
Wijesakera Arachchige Artha
Rathnasiri.
194, Koskanatha Road, Maampe
Piliyandala.

Plaintiff-Respondent.

C.A.No.1039/97 (F)

D.C.Panadura No.1252/M

BEFORE : Deepali Wijesundera J.,
M.M.A.Gaffoor,J.

COUNSEL : W.D.Weerathne for the Defendant- Appellant
Athula Perera with Chathurarni de Silva for the
Plaintiff-Respondents.

ARGUED ON : 28/04/.2015

BOTH PARTIES FILED THEIR WRITTEN SUBMISSIONS.

DECIDED ON : 14/07/2016.

M.M.A. Gaffoor J.

The Plaintiff-Respondent (hearing after referred to as the Plaintiff) has filed this action on 26.02.1996 against the defendant. Appellant (hearing after referred to as the defendant) in the District Court of Panadura praying for only two reliefs.

- (1) Rs.100, 000/= as damages from the defendant.
- (2) For costs and other reliefs as the court shall meet.

This case is registered as a money recovery case. The plaintiff's story is that, by a judgment of District Court of Panadura in case No.17845, he became owner of the land described in the plaint to the instant case while the plaintiff was in possession of the land. One L.G.W.Jayasakera made a complaint to the defendant, who is the Divisional Secretary of Poliyandala and on this complaint, the defendant held an inquiry and after the inquiry the defendant made an order on the plaintiff to hand over Lot 1 in Plan No.1396, which Lot 1 is a partition of the land he got by the judgment of the District Court in case No.17845.

The plaintiff further says that by the order of the defendant he was disposed and thereby he has incurred damages in a sum of Rs.100,000/= and this amount must be recovered from the defendant.

On 10.06.1994, the learned District Judge entered judgment in favour of the plaintiff to claiming that the plaintiff is entitled to the lands

described in the schedule to the plaint and the defendant must pay damages in a sum of Rs.100/- per month from 01.03.1990.

Aggrieved by this judgment, the defendant has preferred this appeal to this court.

Considering the averments in the plaint and the judgment entered in this case, it is very clear that the learned District Judge has completely erred in entering the judgment in favour of the plaintiff. In the plaint the plaintiff has not averred any cause of action. He has not asked for a declaration of title to the land described in the plaint and ejection of the defendant therefore. He has asked for compensation in a sum of Rs.100,000/= only but the learned judge has not granted this amount. If the learned District Judge has found that the plaintiff has not proved his damages in a sum of Rs.100,000/- (as the judgment not granted this amount) . The Court must have dismissed the plaintiff's action. It is settled law that the court grant a relief which is not prayed for Section 40 (e) of the Civil Procedure Code enact that the plaint shall contain a demand of the relief which the plaintiff claims. In this case, the

plaintiff neither averred nor prayed for declaration of title and or possession of the land described in the plaint. In this case of *Surangi Vs. Rodrig* 2003 (3) Sri Lanka Law Reports 35. Amaratunga J. held that “no court is entitled to or has jurisdiction to grant relief to a party which are not prayed for in the prayer of the plaint.

It therefore holds, that the judgment entered in this case declaring the plaintiff entitled to the land more fully described in the schedule to the plaint is a judgment entered without jurisdiction and it must be set aside.

The next question is that the plaintiff has averred in the plaint that the defendant is a Divisional Secretary and all the actions taken by him are on the law of a Divisional Secretary. When this defendant has acted in his official capacity, can the plaintiff file the action against him on personal capacity.

There is no prohibition under the law on filing an action against a nominee in his personal capacity but under certain circumstances the plaintiff will not be able to achieve what he aimed at in the action. If the

plaintiff knows that the defendant has acted in his official capacity as the Divisional Secretary he should have followed the procedure stipulated in the Civil Procedure Code.

Failure to comply with the Provision of Section 461 of the Civil Procedure Code was considered as a absolute bar in bringing an action against a public officer for his act purporting to be done in the official capacity. In the instant case the plaintiff has failed to give notice of action under Section 461 on the defendant and the Attorney-General . In this event, the Court should have followed the procedure laid down in Section 461 A of the Civil Procedure Code.

The defendant's act is not on his personal capacity but in his official capacity representing the State. In the case of *Blacker Vs. David* 53 NLR 499, the plaintiff said the defendant in his personal capacity in respect of a course of action which arise against him in a representative capacity. The Supreme Court held that the action is not circumstanable.

On 28.05.1997 the Court inquired from the defendant whether he needed a lawyer. The defendant has answer this question whether he need the assistance of the Attorney-at-Law in the affirmative. On this answer, the court should have grant a date for him to seek the assistance of the Attorney-General but the plaintiff's counsel objected to this and the court fixed this case for trial and entered judgment on the same day. This act of the learned District Judge is against the principle of natural Justice and Section 460 of the Civil Procedure Code.

Further, when the defendant, as the Divisional Secretary, has acted in his official capacity, this plaintiff himself must have followed the procedure stipulated in chapter XXX1 of the Civil Procedure Code, which the plaintiff has failed to do in this case. The plaint is filed contrary to the procedure stated in the Civil Procedure Code. On the other on the other hand, when the defendant asked court to retain an Attorney-at-Law for him the Court should have allowed that application despite the objection of the plaintiff's counsel.

when the defendant, as the Divisional Secretary, has ordered the plaintiff to give up lot 1 in plan No.1396, when the plaintiff should have done was, instead of filing this action to file an application for a writ of certiorari in the Court of Appeal to quash that order. That is the appropriate procedure. But having misconceived the law and procedure the plaintiff has filed this action. I hold for the reasons stated above, the plaintiff cannot maintain this action.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundara,J.

I agree.

JUDGE OF THE COURT OF APPEAL