

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

In the matter of an application for Leave
to Appeal in terms of Section 754 (2) of
the Civil Procedure Code.

Mohamed Imthiyaz Zakriya
Of No. 85, Dummaladeniya,
Warakapola.

Plaintiff-Respondent-Petitioner

C.A.L.A No. 20/2007

D.C. Kegalle Case No. 7023/L

Vs

Warakapola Multi-Purpose
Co-Operative Society Limited
Of Warakapola.

**Defendant-Respondent-
Respondent**

Roshan Salinda Paranagama
Basnayake Nilame
of Sri Paththini Devalaya,
Sri Paththini Devalaya,
Kandy.

Added Defendant – Respondent

BEFORE

: Deepali Wijesundera J.

M.M.A Gaffoor J.

COUNSEL

: Rohan Sahabandu PC for the
Petitioner.

Manohara De Silva PC for the
Defendant – Respondent.

H.Withanachchi for the

Added- Defendant – Respondent.

ARGUED ON

: 28th October, 2015

DECIDED ON

: 29th July, 2016

Deepali Wijesundera J.

The plaintiff respondent petitioner (hereafter referred to as petitioner) instituted an action against the defendant respondent (hereafter referred to as the defendant) seeking a declaration of title to the land in suit. The defendant had denied the petitioners title. In the meantime the petitioner defendant respondent the Basnayake Nilame of Paththini Devale Kandy has made an application to intervene in the said action under *Sec. 18 of the Civil Procedure Code*. The petitioner has objected and after hearing all parties the learned District Judge has allowed the said application of the Basnayake Nilame to intervene in the action by order dated 12/01/2007. This application has been filed by the plaintiff petitioner against the said order of the learned District Judge.

The learned counsel for the petitioner argued that the petitioner is the owner of the premises in suit and that his predecessor in title had given the premises on rent to the defendant respondent and that he paid rent to the petitioner. By letter dated 28/04/2003 the defendant respondent had denied petitioner's title and continued to be in wrongful possession the petitioner stated. The petitioner's argument was that this case is a dispute between him and the respondent and that the defendant respondent Basnayake Nilame is not a necessary party to this action.

The petitioner stated that the application of the respondent had been made in collusion with the defendant respondent for the defendant respondent to be in wrongful occupation of the said premises, for a longer period. The petitioner stated that if the District Judge's order is affirmed by this court a tenancy action will be confused by an application for a declaration of title. The petitioner citing the judgment in **Weerapperuma vs De Silva 61 NLR 481** and **Arumugam Coomaraswamy vs Andiris Appuhamy 1985 2 SLR 219** stated no question arises on the title of the petitioner to the premises given on rent and that a tenant can not deny the title of the land lord. He also stated that it has been decided in the above case that the question to be settled must be a question in the action which can not be effectually and completely settled unless he is a party. This judgment in Commaraswamy's case stated that a necessary party

has to be added for a question to be settled. This judgment is not relevant to the petitioner's argument.

The defendant respondent's learned counsel argued that under *Sec. 18 (1) of the Civil Procedure Code* the addition of the Basnayake Nilame to the case is most appropriate to determine the legal question of ownership of the land in suit. Citing the judgment in **Arumugam Coomaraswamy vs Andiris appuhamy** he stated that the action can not be decided without adding the defendant respondent. He cited the judgment in **Erid Perera vs Somawathie Lokuge 2000 3 SLR 200** and stated that in order to avoid multiplicity of actions and to lower the cost of litigation addition of a party is necessary.

The defendant respondent stated that the defendant respondent had filed documentary evidence to show that the Paththini Devale is the legal owner of the subject matter of the action but the petitioner persisted to proceed with the case without the participation of the Devale. The defendant respondent further stated that documents produced by them to the District Court showed that the legal rights relied by them are *prima facie* rights acquired long before the District Court case was filed by the petitioner.

The defendant respondent stated that the petitioner continued to be silent on the documents produced by the Paththini Devale and continued to say that the action should be argued between him and the defendant respondent co-operative society without making the Devale a party which fact casts a doubt over the credibility of the petitioner.

The petitioner has filed action in the District Court to eject the defendant respondent and also for a declaration of title to the premises in suit, the defendant respondent intervenient petitioner has made an application to intervene in the said case. The learned District Judge after hearing the plaintiff petitioner's objections has allowed the Basnayake Nilame to intervene. The petitioner's argument that it is a matter between him and the defendant co-operative society and that the Basnayake Nilame is not a required party is baseless. The application was made under *Sec. 18 (1) of the Civil Procedure Code* where all the necessary parties have to be added to avoid duplicity in litigation. As stated by the petitioner if the Basnayake Nilame is not added as a party there will be another action for the same property later on.

In Arumugam Coomaraswamy vs Andiris Appuhamy it has been decided that "Whenever a court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that

actions may be brought in respect of that transaction the court has the power to bring all the parties before it and determine the rights of all in one proceeding". If the intervenient respondent is not added as a party he will have to file a separate action for the same property on the same issues. Therefore the learned District Judge has very correctly allowed the application for intervention. Documents marked with the petition by the Basnayake Nilame shows that there has been a transaction between the Devale and the defendant respondent therefore the District Judge has taken the correct decision when he allowed the defendant petitioner's application.

For the afore stated reasons I decide to affirm the order of the learned District Judge dated 12.01.2007. The petitioner's application is dismissed with costs fixed at Rs. 50,000/=.

JUDGE OF THE COURT OF APPEAL

M.M.A.Gaffoor J.

I agree.

JUDGE OF THE COURT OF APPEAL