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

1A. Mohamed Ismail Mohamed Sabri,
No. 16B, 2nd Lane, Dehiwela.

1B. Mohamed Ismail Sadhana,
No.14, Dariel Close, Slough, SL 1
5FU, United Kingdom.

CA 358/99 (F)

D.C. Puttalam Case No. L/468/85

By her Attorney Mohamed Ismail
Mohamed Sabri,
No. 16B, 2nd Lane, Dehiwela.

**SUBSTITUTED – PLAINTIFFS
– APPELLENTS**

2. Mohamed Cassim Ganimathul
Fahira
No. 39, 3rd Cross Street, Puttalam.

PLAINTIFF – APPELLENTS

1. Abuthalibu Sithy Sareena
(Deceased)
- 1A. Fathima Maheesa
No. 25, K.K. Street, Puttalam.
2. Abuthalibu Sithy Sainambu
No. 35, 3rd Cross Street, Puttalam.
3. A.K. Abuthalibu
(Deceased)
- 3A. Mohamed Munas Abuthalibu
Anuradhapura Road, Puttalam.

DEFENDANT – RESPONDENTS

BEFORE: M.M.A. GAFFOOR J

S. DEVIKA DE LIVERA TENNEKOON J

COUNSEL:

**K.V.S. Ganeshrajan for the Plaintiff –
Appellant**

**Champaka Ladduwahetty for the 1st – 3rd
Defendant – Respondents**

ARGUED ON:

27.02.2017

WRITTEN SUBMISSIONS –

Plaintiff – Appellant – 22.06.2017

Defendant – Respondents – 03.05.2017

DECIDED ON:

28.11.2017

S. DEVIKA DE LIVERA TENNEKOON J

The Plaintiff – Respondent (hereinafter referred to as the Plaintiff) instituted action in the District Court of Puttalam by Plaint dated 06.02.1985 against the Defendant – Respondents (hereinafter referred to as the Defendants) for *inter alia* a declaration that the premises described in the Schedule A to the Plaint belongs absolutely to the 1st Plaintiff and a declaration that the premises described in the Schedule B to the Plaint belongs absolutely to the 2nd Plaintiff. The Defendants filed Answer dated 03.05.1985 and sought for a dismissal of the Plaint and further that the Defendants be entitled to right of way as it exists now.

When the instant Appeal came up for argument the Defendants raised preliminary objections as follows;

- a) No Complaint has been filed by the Plaintiffs – Appellants in the official language of the Court.
- b) The Plaintiffs have failed to close their case reading in evidence the documents they marked and relied on for their case.

Upon a perusal of the Appeal brief it is clear that there is no Complaint filed in Sinhala. As per Article 24(1) of the Constitution;

“Sinhala and Tamil shall be the languages of the courts throughout Sri Lanka and Sinhala shall be used as the language of the court situated in all the areas of Sri Lanka except those in any area where Tamil is the language of administration. The record and proceedings shall be in the language of the court. In the event of an appeal from any court records shall also be prepared in the language of the court hearing the appeal, if the language of such court is other than the language used by the court from which the appeal is preferred.”

The Counsel for the Defendants submits that therefore there is no valid Complaint before Court upon which the ‘Court can act and proceedings commence.’

However, it is evident that the English Complaint dated 06.02.1985 (vide page 44 of the appeal brief) has been answered by the Defendants by Answer dated 03.05.1985 (vide page 358 of the appeal brief) which is also in English.

On a perusal of the Journal Entries it is further evident that the English Complaint dated 06.02.1985 has been accepted not only by the defendants but also by Court and Court has proceeded with the case. On 10.03.1987 the case has been taken up for trial and the issues and admissions of the parties have been

recorded in Sinhalese, and the language of the Court and record has been maintained in conformity to Article 24(1) of the Constitution mentioned above.

Therefore the question this Court has to now consider is whether the filing of an English Plaint invalidates the entire Court process. The English plaint has been filed in 1985 which is 32 years prior to this objection been raised on behalf of the Defendants.

Up until then, the Defendants have accepted and answered the averments contained in English in the Plaint and the learned District Judge has commenced and continued with trial and thereafter delivered judgement dismissing the application of the Plaintiffs. It is also clear that no prejudice has been caused to the Defendants by reason of the Plaint been in English, this is so because the Answer of the Defendants was filed in English.

To reject the Plaint at this stage would be to invalidate the whole Court process owing to a technicality by which no prejudice has been caused. As such the Defendants objection regarding the maintainability of this action is overruled.

The second objection raised by the Defendants relates to matters that ought to be considered when the main matter is taken up for argument.

Therefore, the preliminary objections of the Defendants are overruled and this matter may be fixed for argument on its merits.

Objection overruled.

Judge of the Court of Appeal

M.M.A. GAFFOOR J

I Agree.

Judge of the Court of Appeal