

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

Amirthagowry Subramanian  
Nee Navaratnam  
No.117, Arunakiri Road,  
Trincomalee.

**Substituted-Defendant-Appellant**

**C.A.No. 1182/99 (F)**  
**D.C.Trincomalee 385**

Vs.

Jeyadevi Arunaseelam  
No.105, Post Office Road,  
Trincomalee.

**Plaintiff-Respondent-  
Respondent.**

**Before** : M.M.A. Gaffoor J.

**Counsel** : K.V.S. Ganesharajan with S. George  
for the Substituted - Defendant-  
Appellant.

V.Puvitharan with P.R.Vasanthini  
for the Plaintiff - Respondent.

**Written Submission filed on** : 02/10/2017

**Decided on** : 30/11/2017

**M.M.A.Gaffoor,J.**

This is an appeal filed by the Defendant-Appellant against the Judgment dated 22/07/1999 delivered by the District Judge of Trincomalee. In this appeal Appellant raised preliminary objection and stated that the case should be sent back for re trial, without going into merit of the case, as the Learned District Judge made order allowing the issues 23 to 27 on 22.07.1999 and answered the said issues in the judgment delivered on the same day.

However this is a rei-vindicatio action filled by the Plaintiff-Respondent in the District of Trincomalee against the Defendant-Appellant seeking for following reliefs inter alia:

1. A declaration that the respondent is the owner of the premises which was described in the schedule to the plaint.

II. For ejection of the appellant and all those holding under him from the said premises.

The defendant in his answer denied the averments contained in the plaint, and prayed the Court for declaration of title for the land morefully described in the schedule of his answer.

And also, the Court fixed for trial, prior to the trial both parties raised issues and while giving evidence also parties raised issues and totally 27 issues were recorded. The issues No 23-27 raised by the plaintiff's counsel while the defendant was giving evidence. And also the said issues 23-27 were not allowed at the time of the trial and ordered separately regarding the said issues the same day of the judgment and prior to the judgment. It is clear there were no opportunities given by the District Judge of Trincomalee to address the said issues to the parties.

According to the decided case ***Avudaiappan Vs Indian Overseas Bank 1995 2 SLR 131*** was held, that “Section 146 of the Civil Procedure Code Permits Court of record issues on which the right decision of the case appears to Court to depend on the pleadings, documents and on evidence led at the trial.”

However in Section 149 of the Civil Procedure Code clearly states, “the Court may, at any time before passing a decree, amend the issue or frame additional issues on such terms as it thinks fit”.

This Section as discussed in the case of ***Hameed Vs. Cassim 1996 2 SLR Pg.30***. It was held that the Court is empowered to frame issues under Section 149 of the Civil Procedure Code and the same can be framed by the Court in the interest of justice which is primarily to ensure the correct decision is given in the case.

In this case District Court of Trincomallee did not frame additional issues but raises by the party.

However in the said case Dr. Ranaraja, J., stated. “ it is not necessary that the new issue should arise on the pleadings. A new issue could be framed on the evidence led by the parties orally or in the form of documents. The only restriction is that the Judge in framing a new issue should act in the interests of justice, which is primarily to ensure the correct decision is given in the case.

Bertram C.J. in ***Silva Vs. Obeysekar*** commenting on the discretion of a judge to allow issues after the commencement of the trial observed, “No doubt it is a matter within the discretion of the Judge whether he will allow fresh issues to be formulated after the case has commenced, but he should do so when such a course appears to be in the interest of justice, and it is certainly not a valid objection to such a course being taken that they do not rise on the pleadings.”

The Provisions of Section 149 considered along with the observation of Betram C.J. certainly do not preclude a District Judge from framing a new issue after the parties have closed their respective cases and before the judgment is read out in

open court, it is not necessary that the new issue should arise on the pleadings. A new issue could be framed on the evidence led by the parties orally or in the form of documents. The only restriction is that the Judge in framing a new issue should act in the interest of justice, which is primarily to ensure the correct decision is given in the case. It also means that the Judge must ensure that which it is considered necessary to hear parties to arrive at the right decision on the new issue, that they be permitted to lead fresh evidence or if it is purely a question of law, that they be afforded an opportunity to make submissions thereon.

In this matter Judge of District Court did not allow or reject the issues Nos.23-27 and held he would give the order on the objection t a later stage of this case. Therefore he had a discretion power to give order at the later stage of trial or prior to the judgment or the same day of judgment.

Even though the defendant had called all his witnesses and he too gave evidences after the said issues were raised.

Therefore the defendant had enough opportunity to refute the said issues.

Therefore I am in view, that the District Court of Trincomalee did not erred in law in answering the said issues 23 to 27 in the judgment dated 22.07.1999 allowing the issue.

Therefore the preliminary objections is over-ruled and the case is fixed for hearing.

**JUDGE OF THE CORUT OF APPEAL**