

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

Lionel Hettihewa
Hector Hettihewa
Ranjith Hettihewa
Yamuna Butris Hettihewa
All of Kahagelagewatta
Beliatta
Defendant-Appellants

Case No: CA/551/2000/F

DC Tangalle Case No: 1735/L

Vs.

Punchi Hewage Pathmini
Punchi Hewage Malini
Punchi Hewage Rohini
Punchi Hewage Chamara
Sandaruwan
All of Kahagelagewatta
Beliatta
Plaintiff-Respondents

Before: Mahinda Samayawardhena, J.

Counsel: W. Weeraratne for the Appellants.

Thilan Liyanage for the Respondents.

Decided on: 23.10.2018

Samayawardhena, J.

The plaintiffs instituted this action against the defendants seeking declaration of title to the land described in the schedule to the plaint, ejectment of the defendants therefrom and damages. The plaintiffs thereafter, upon a commission issued through Court, depicted the exact portion of land which they claim by way of a Plan, which was marked at the trial as X. The plaintiffs claim Lot 1 of the said Plan. The defendants filed the answer stating that the plaintiffs are only entitled to the house marked A in Lot 1 of the above Plan, and the entire land shown in the said Plan is owned by the defendants. After trial, the learned District Judge, by the Judgment dated 21.08.2000 held that the plaintiffs are entitled to Lot 1 of Plan X including the house standing on it and dismissed the other reliefs. The defendants have preferred this appeal against this Judgment.

At the argument before this Court, learned counsel for both parties agreed to dispose of argument by way of written submissions, which have now been filed.

Learned counsel for the appellants takes up only two points in his written submissions to say that the Judgment of the District Court shall be set aside.

- (a) The learned District Judge has not complied with section 187 of the Civil Procedure Code in that no reasons have been given for the decision.
- (b) The plaintiffs have failed to identify the portion of land which they claim.

Let me now deal with those two arguments.

In pursuance of the first argument, learned counsel for the appellants has quoted the section 187 of the Civil Procedure Code and two Judgments. That is all he has done. There is no dispute to accept it on principle, but I cannot understand on what basis the learned counsel for the appellants states that the learned trial Judge has not complied with section 187 of the Civil Procedure Code when the learned trial Judge has given adequate reasons to her decision. Conversely, it is the learned counsel who has not given any reason why he says that the learned trial Judge has not complied with section 187 of the Civil Procedure Code.

The first argument of the appellants is wholly devoid of merit.

The second argument of the appellants is no better. It is true that the plaintiffs have described the portion of land they claim by extent and boundaries sans the name of the land in the schedule to the plaint. In the plaint the land they claim has not been identified by way of a Plan. However, before the answer was filed, the plaintiffs got a commission issued to properly identify the portion of land they claim. It is thereafter the defendants filed the answer, and in the answer, they referred to the said Plan. Then at the trial, the plaintiffs raised an issue whether the land described in the schedule to the plaint is depicted as Lot 1 in the said Plan—vide issue No.2. This issue has been accepted without any objection and answered by learned trial Judge in the affirmative in the Judgment. There was no issue raised contesting the identification of the land at the trial.

It is trite law that *“the case is not tried on the pleadings, once issues are raised and accepted by the court the pleadings recede*

to the background.” (*Hanaffi v. Nallamma* [1998] 1 Sri LR 73 at 77 per G.P.S de Silva C.J., *Vide also: Dharmasiri v. Wickrematunga* [2002] 2 Sri LR 218, *Gunasinghe v. Samarasundara* [2004] 3 Sri LR 28, *Kulatunga v. Ranaweera* [2005] 2 Sri LR 197, *Peiris v. Siripala* [2009] 1 Sri LR 75 at 78) Hence it is pointless in appeal for the appellants to argue that the plaintiffs have failed to properly identify the land in suit in the plaint.

Hence the second argument must also fail.

For the aforesaid reasons, the Judgment of the District Court is affirmed and the appeal is dismissed but without costs.

Judge of the Court of Appeal