

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

Jalin Pedi Durayalage Manuel alias Jayalath
Pedi Durayalage Manuel
Mawathagama, Yakadapatha,
Kobeigane Post.

Plaintiff.

C.A.425/2000 (F)
D.C. Kuliypitiya No.12198/L.

Vs.

R.W. Pina alias R.W. Pinhamy
Ihala Radawa,
Kirimetiya Post.

Defendant.

And Now Between.

Jalin Pedi Durayalage Manuel alias Jayalath
Pedi Durayalage Manuel
Mawathagama, Yakadapatha,
Kobeigane Post. (Deceased)

Jayalath Pedi Durayalage Piyaseeli
Wijelatha.
Mawathagame, Hengamuwa Post,
Kobeigane.

Substituted Plaintiff/Appellant.

Vs.

R.W. Pina alias R.W. Pinhamy
Ihala Radawa,
Kirimetiya Post.

Defendant-Respondent.

- 1A. R.W. Gunasena.
- 1B. R.W. Somaratne
- 1C. R.W. Wijepala.
- 1D. R.W. Dharmasena.
- 1E. R.W. Nimal Jayakody.
- 1F. R.W. Lalitha Padmini

All of
Ihala Radawa,
Kirimetiya Post.

Substituted/Defendant/ Respondents.

Before : A.H.M.D. Nawaz, J.
E.A.G.R. Amarasekara, J.

Counsel : W. Dayaratne P.C. with A. Shiromi Peiris for the Substituted –
Plaintiff-Appellant.
M.C. Jayaratne with H.D.J. Bandara for the 1A to 1F substituted
- Defendant – Respondents.

Decided on : 2018.12.14.

E.A.G.R. Amarasekara, J.

By the Judgment dated 25.07.2000 in the District Court of Kuliyaipitiya case No. 12198/L (hereinafter sometimes referred to as the present action), the learned District Judge dismissed the Plaintiff- Appellant's (hereinafter sometimes referred as the Plaintiff) action on the premise that the Plaintiff's action is barred by the law of Res Judicata.

The Plaintiff instituted the aforesaid action seeking for a declaration of title to the land more fully described in the schedule to the Plaint, which he claimed under a permit, (P1), issued under the land Development Ordances and the ejectment of the Defendant and those who are holding under him. The Defendant filed his answer and pleaded that the Plaintiff filed two actions bearing Nos. 6419/L and 10419/L on the same cause of action which were dismissed and thus, the Judgments in the said cases stand as res judicata against the Plaintiff. The parties raised 6 preliminary issues; first two by the Defendant and the rest by the Plaintiff.

The learned District Judge after considering the submissions and the documents placed before her had come to the conclusion that due to the Judgment in 6419/L which was affirmed by this Court in appeal by its Judgment dated 21.10.1998, the Plaintiff cannot proceed with the present action no.12198/L as it is res Judicata.

Section 207 of the Civil Procedure Code reads as follows:

“All decrees passed by the Court shall, subject to appeal when an appeal is allowed, be final between the parties, and no Plaintiff shall hereafter be non-suited.

Explanation – Every right of property, or to money or to damages, or to relief of any kind which can be claimed, set up, or put in issue between parties to an action upon the cause of action for which the action is brought, whether it be actually so claimed, set up or put in issue or not in the action, becomes, on the passing of the final decree in the action, a res judicata which cannot afterwards be made the subject of action for the same cause between the same parties.”

It is clear from the aforesaid section and the explanation that the law relating to res judicata applies only when the cause of action is the same. Therefore, it is necessary to see whether the cause of actions related to previous cases, namely 6419/L and 10419/L are the same when compared to the present action.

It appears that in coming to her conclusion that the action is res judicata, the learned District Judge has compared the reliefs prayed for in this case No. 12198/L and case no. 6419/L and found that they are almost the same except for the claim with regard to the damages but what was relevant to be considered were the averment^s explaining the cause of action in the present action and the nature of the cause of actionⁱⁿ accepted by the Judgment of the previous case. The date of the accrual of the cause of action in each case too would have been relevant in identifying whether it is the same cause of action.

The Plaintiff filed in the case No. 6419/Land described the cause of action in that case as follows;

1. The Plaintiff is the permit holder under the land Development Ordinance to the land described in the schedule to that plaint by virtue of the permit No. 33240.
2. He had to take a loan of Rs. 1500/- from the Defendant and in view of settling the loan he handed over the possession of the said land for 8 years on a lease.
3. The aforesaid 8 years period lapsed in April 1981 and though he requested from the Defendant to hand over the possession back to him the Defendant did not hand over the possession causing damages.

On the aforesaid grounds the Plaintiff had stated in case No. 6419/L, that a cause of action has accrued to him for the recovery of possession and also for damages from April 1981.

The learned District Judge dismissed the Plaintiff's action in Case No. 6419/L, and in appeal, this Court by its Judgment dated 21.10.1998 affirmed the said Judgment of the learned District Judge. Though there were no notarially executed document, the learned District Judge as well as this court after considering the document marked as V3 and V4 and the handing over of the possession to the Defendant by the Plaintiff, had come to the conclusion that the Plaintiff was estopped from denying the arrangement having received the benefit of money given to him. It should be noted that it was common ground that the Plaintiff was the permit holder. Furthermore, in the Judgment dated 18.07.1996 which was affirmed by this court, the learned District Judge had come to the conclusion that the

Defendant was entitled to remain in the property till the Plaintiff pays the money taken as per the arrangement.

Though it is not clearly stated in both the Judgments of the learned District Judge and the Judgment of this court, the legal position accepted by both the courts appears to be that a license agreement was created between the parties through the informal arrangement by taking Rs. 2500/- and handing over the property, and till Rs. 2500/- is returned the license agreement cannot be terminated.

The plaint in the present action described the cause of action in the following manner;

1. The Plaintiff is the permit holder of the land described in the schedule to the Plaint.
2. The Plaintiff took a loan of Rs. 2500/- from the Defendant and in view of settling the loan he handed over the possession of the land on a lease for 8 years to the Defendant.
3. After the lapse of said 8 years, in April 1981, the Plaintiff asked the Defendant to return the property but the Defendant without returning the property continued to stay in the property.
4. Therefore, he filed the aforesaid action No. 6419/L in the District Court and the District Court held that he could not enforce his rights till he pays Rs.2500/- taken as a loan.
5. The Plaintiff appealed to this court and this court confirmed the said Judgment of the learned District Judge.

6. The Plaintiff sent a letter of demand requesting the Defendant to accept Rs.2500/- and return the property back which the Defendant failed to do.
7. The Plaintiff sent the Rs.2500/- by way of a money order to the Defendant but the defendant refused to accept the said money and return the property.
8. The Plaintiff deposited the said Rs.2500/ in the District Court.
9. Therefore, a cause of action has accrued to the Plaintiff to recover the possession of the property from the Defendant and to claim damages.

The cause of action described in the present action is a cause of action which has accrued after the decision in appeal of this court in the previous action. In other words, it relates to the payment of loan taken and thus, termination of the ground to hold the property as a licensee by the Defendant. Hence, it is clear that the purported cause of action described in the present action No. 12198/L is quite different from the cause of action described in the previous case No. 6419/L and it has accrued to the Defendant only after the decision of this court in the previous case.

In that backdrop it is my considered view that the learned District Judge erred in holding that the action No. 12198/L is res judicata due to the decision in 6419/L. However, this itself is not sufficient to grant relief to the Plaintiff as prayed for in the Petition of appeal, since the preliminary issue No.1 raised in the present action also refers to another action namely No. 10419/L filed by the Plaintiff with regard to the same property. The said action No. 10419/L was instituted by the Plaintiff when the appeal in the first action No. 6419/L was pending. The learned Additional District Judge who heard the action No. 10419/L had dismissed the said action

stating that the cause of action described in that action is res judicata due to the decision in 6419/L. This court cannot agree with the said finding of the learned Additional District Judge in the said Judgment dated 30.04.1997 in case No. 10419/L for the following reasons;

1. The appeal was pending in 6419/L and therefore there was no final decision in that case as at the date of Judgement in 10419/L.
2. The cause of action in 10419/L was different from the cause of action in 6419/L since, there too, similar to the present action the Plaintiff had offered to return the Rs. 2500/- taken as a loan by the letter of demand dated 21.01.1992 sent through his lawyer. The said cause of action is very much similar to the purported cause of action referred to in the present action. Since there too the Plaintiff terminates the right to hold the property as a licensee by the Defendant, by offering the Rs. 2500/- taken as the loan which gave the Defendant the right to hold the property as a licensee. Somehow or the other the Plaintiff has not appealed against the Judgment in 10419/L, though it was wrongly decided as elaborated above.

However, it is the considered view of this court that action No. 10419/L is a bar to bring the present action No. 12198/L for the following reasons;

1. By offering Rs.2500/ taken as a loan to the Defendant prior to the institution of 10419/L the Plaintiff had terminated the Defendant's right to hold the property as a licensee. Therefore, there is no licensor and licensee relationship to be terminated again by offering to pay Rs.2500/- again or

depositing it in the District Court. There is no licensor and licensee relationship to be terminated again to give rise to a new cause of action in the present action No. 12198/L. The said cause of action was put in issue in the previous case No. 10419/L and was decided against the Plaintiff against which he did not appeal.

Therefore, the purported cause of action in the present action is res judicata due to the decision dated 30.04.1997 in case No. 10419/L.

The Plaintiff attempts to argue that the decision or Judgment in 10419/L is null and void due to the fact that the appeal in 6419/L was pending at that time. This court cannot concede with this argument since the cause of action in 10419/L was different from the cause of action in 6419/L.

Even though this court is of the view that action No. 10419/L was wrongly decided, the Plaintiff has not preferred an appeal against it. On the other hand, this court shall not on its own motion, act in revision to vacate or alter the Judgment in 10419/L, since it was decided as far back as in 1997. The factaul situation might have been changed by now. Even though 10419/L was wrongly decided against the Plaintiff as there was no appeal against it, the purported cause of action in the present action No.12198/L becomes res judicata. The answer to issue No.1 raised in the said case 12198/L should still be in the affirmative.

Therefore, this appeal is dismissed with costs.

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E.A.G.R. Amarasekara
Judge of the Court of Appeal.

I agree.

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A.H.M.D. Nawaz,
Judge of the Court of appeal.