

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

K.P. Murugaiya,  
Sandasiri Dunuvila,  
Meda Mahanuwara.

**Plaintiff-Appellant**

**Case No: CA 497/2000(F)**

**D.C. Kandy Case No: 25417/MR**

**Vs.**

K.P. Selvapakyam,  
Sandasiri Dunuvila,  
Meda Mahanuwara.

**Defendant-Respondent**

**Before:** Janak De Silva J.

**Counsel:**

P.L. Gunawardena with J.D. Douglas for Plaintiff-Appellant

D. Wijewardena with Sanjeewa Ranaweera for Defendant-Respondent

**Written Submissions tendered on:**

Plaintiff-Appellant on 15.11.2013

Defendant-Respondent on 11.06.2014

**Argued on:** 11.03.2019

**Decided on:** 24.05.2019

**Janak De Silva J.**

This is an appeal against the judgment of the learned Additional District Judge of Kandy dated 11.07.2000.

The pleaded case of the Plaintiff-Appellant (Appellant) is that there was an agreement between him and the Defendant-Respondent (Respondent) which required the Respondent to perform certain acts in relation to the tea estate co-owned by the parties. The Respondent is the sister of the Appellant. The Appellant claims that due to the failure of the Respondent to act in accordance with the agreement he suffered damages amounting to Rs. 4,90,000/= which he sought to recover in this action.

The Respondent denied that there was any such agreement between the parties.

At the trial an admission was recorded that the parties are the co-owners of the land in dispute.

The learned Additional District Judge dismissed the action and hence this appeal.

Although the journal entry of 28.06.2000 indicates that the Appellant had tendered the marked documents to Court the record does not contain any of the documents marked by the Appellant during the trial. As directed by Court the Registrar inquired from the Registrar, District Court of Kandy whether documents marked P1 to P7 are available there to which the response was in the negative. After several attempts the learned counsel for the Appellant informed that their attempts at obtaining copies of those documents proved futile. The only document available to Court was the document P1 marked with the plaint which was marked as P3 during the trial.

It is this document P3 that is relied on by the Appellant to establish that there was an agreement between the parties. However, its contents do not establish any such contract between the parties. It is instead a document by which the Appellant appointed the Respondent as his agent to deal with the Tea Small Holdings Development Authority on his behalf. The Appellant testified that by P3 the Respondent agreed to pay the workers and look after the work of the tea estate but the contents of P3 do not establish any such obligation on the part of the Respondent. In these circumstances, the learned Additional District Judge correctly held that the Appellant had failed to prove the alleged contract between the parties.

In any event, the Appellant has failed to lead evidence of any damages suffered by him due to the alleged breach by the Respondent. As Soza J. held in *Weerakoon v. Hewamallika* [(1978-79) 2 Sri.L.R. 97 at 109]:

" We might remember here the fact that in Roman-Dutch Law the mere fact of breach does not entitle the injured party to claim damages in the absence of some actual loss sustained. The true *damnum* in contract is compensation for patrimonial loss. In this respect our law differs from the English law. The measure of damages will consist of the actual loss the owner has sustained as well as such future loss as may be the necessary consequence of the breach. The injured party has the right also to claim by way of damages the reasonable profits which he has lost (*damnum emergens et lucrum cessans*). As far as money can do it, the damages awarded will be commensurate to place the innocent party in the position in which he would have been had the contract been performed."

For the foregoing reasons, I see no reason to interfere with judgment of the learned Additional District Judge of Kandy dated 11.07.2000.

Appeal is dismissed with costs.

Judge of the Court of Appeal