

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

Shahul Hameed Mohamed Yusoof

No. 1/5 Sankaran Fort

Gampola

**Defendant-Appellant**

**Case No. CA 21/2000(F)**

**D.C. Gampola 3349/MR**

**Vs.**

1. Kahawattegedera Ratnayake

Ethgala, Gampola

2. Godagama Vidanalage Karunadasa,  
Rathmalkaduwa, Gampola.

**Plaintiffs-Respondents**

**Before:** Janak De Silva J.

**Counsel:**

M.I. Hadi for Defendant-Appellant

Mohan Walpita with Hemathilaka Medakanda for Plaintiffs-Respondents

**Written Submissions tendered on:**

Defendant-Appellant on 21.06.2018

Plaintiffs-Respondents on 14.09.2017

**Argued on:** 14.03.2019

**Decided on:** 07.06.2019

**Janak De Silva J.**

This is an appeal against the judgment of the learned District Judge of Gampola dated 17.12.1999.

The Plaintiffs-Respondents (Plaintiffs) instituted the above styled action against the Defendant-Appellant (Defendant) claiming that there was an agreement between the parties whereby the Plaintiffs paid a sum of Rs. 44,000/= to the Defendant for sending the Plaintiffs to Maldives for employment. The Plaintiffs alleged that although they were sent to Maldives it was on a tourist visa valid for 14 days and that they did not get any employment there.

The Plaintiffs' claim that upon their return to Sri Lanka they met the Defendant who paid them a sum of Rs. 1,000/= with the promise to return the balance sum of Rs. 43,000/= which he failed to do. They sued to recover the balance sum of Rs, 43,000/= with interest thereon.

The learned District Judge entered judgment in favour of the Plaintiffs' for a sum of Rs. 33,000/= with interest thereon and hence this appeal.

The learned District Judge held that the Plaintiffs' succeeded in establishing the agreement between the parties and that the Defendant had breached it by only providing a tourist visa valid for fourteen days and by failing to provide any employment to the Plaintiff's as agreed.

In so far as providing employment to the Plaintiffs is concerned document marked V3 written by one M.M. Dawood, Gadhakoalhi Magu, Male dated 20.04.1994 [Appeal Brief page 135] to the Defendant indicates that he had employed the Plaintiffs and paid the salary for the months of January and February 1994 after which their employment appears to have been terminated due to them going on strike. This document when sought to be marked was objected to by the learned counsel for the Plaintiffs but the learned District Judge overruled the said objection and allowed it to be marked subject to cross examination on the basis that it may assist in the judgment [Appeal Brief page 118].

However, the learned District Judge in the judgment states that it has not been proved as evidence and the contents could have been accepted if so proved [Appeal Brief page 147]. I am of the view that the learned District Judge erred since V3 was not marked subject to proof and is therefore for all purposes evidence in the case.

It is trite law that when a document is marked subject to proof during the trial is then read in evidence without any objection at the end of the case of the party who tendered that document, it becomes evidence for all purposes of the law [*Sri Lanka Ports Authority and Another v. Jugolinija* (1981) 1 Sri.L.R. 18 at 24, *Balapitiya Gunananda Thero v. Talalle Methananda Thero* (1997) 2 Sri.L.R. 101, *Silva v. Kindersle* (18 N.L.R. 85), *Adaicappa Chetty v. Thos. Cook and Son* (31 N.L.R. 385), *Syed Mohamed v. Perera v.* (58 N.L.R. 246), *Cinemas Limited v. Sounderarajan* (1998) 2 Sri.L.R. 16, *Stassen Exports Ltd v. Brooke Bond Group Ltd and two others* (2010) 2 Sri.L.R. 36]. In this action although the Defendant did not read in evidence any of the documents marked on his behalf at the end of his case, the document V3 still remains part of the record as evidence for all purposes of the law.

Therefore, the finding of the learned District Judge that the Defendant breached the agreement with the Plaintiff's by failing to provide any employment to the Plaintiff's as agreed cannot be sustained and must be set aside.

The leaned counsel for the Defendant contended that the evidence shows that a visa valid for three months was issued to the Plaintiffs [Appeal Brief page 157]. However, the 1<sup>st</sup> Plaintiff testified that the said endorsement was made on 4<sup>th</sup> April when they were leaving Maldives [Appeal Brief page 49] and therefore that contention fails. Having carefully considered all the evidence led in the case, I see no reason to disagree with the conclusions of the learned District Judge that the Defendant had breached the agreement with the Plaintiffs by failing to procure the necessary visas enabling the Plaintiffs to be employed in Maldives.

For all the foregoing reasons and subject to my conclusions on the evidentiary value of V3, I see no reason to interfere with the judgment of the learned District Judge of Gampola dated 17.12.1999.

Appeal is dismissed with costs.

Judge of the Court of Appeal