

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

S. D. Gunadasa,
No. 31, Kandy Road, Dalugama,
Kelaniya. (Carrying on business under
the name, style and firm of "Dasa
Industries" at the aforementioned
address)

Plaintiff

C.A. No. 896 / 2000 F

Vs.

D.C. Colombo No. 2803 / SPL

1. Kandasamy Doresamy,
2. Karuppanan Tevarangan,
3. John Bernard Gunasekera,
All of No 52, Bankshall Street,
Colombo 11 and
No 311, Old Moor Street,
Colombo 12. (Carrying on business in
partnership under the name, style and
firm of "Duro Pipe Industries)
5. Registrar of Trade Marks, Patents and
Designs,
No 267, Union Place,
Colombo 7.
6. Duro Pipe Industries Ltd.
No. 311, 2nd Floor, Old Moor Street,
Colombo 12.

Defendants

AND NOW BETWEEN

S. D. Gunadasa,
No. 31, Kandy Road, Dalugama,
Kelaniya. (Carrying on business under
the name, style and firm of “Dasa
Industries” at the aforementioned
address)

Plaintiff Appellant

Vs

1. Kandasamy Doresamy,
2. Karuppanan Tevarangan,
3. John Bernard Gunasekera,
All of No 52, Bankshall Street,
Colombo 11 and
No 311, Old Moor Street,
Colombo 12. (Carrying on business in
partnership under the name, style and
firm of “Duro Pipe Industries)
5. Registrar of Trade Marks, Patents and
Designs,
No 267, Union Place,
Colombo 7.
6. Duro Pipe Industries Ltd.
No. 311, 2nd Floor, Old Moor Street,
Colombo 12.

Defendant Respondents

BEFORE

: UPALY ABEYRATHNE, J.

COUNSEL

: Plaintiff Appellant is absent and unrepresented
Sanjeewa Jayawardene PC with Kamran Aziz,
Niranjana Arulpragasam and A. Niwunhena for
the 1st 2nd 3rd and 5th Defendant Respondents

ARGUED ON : 14.05.2013

DECIDED ON : 31.07.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondents (hereinafter referred to as the Respondents) in the District Court of Colombo praying for an order expunging the Trade Mark 41616 in class 19 from the register of trademarks and for a declaration that Trade Mark 41616 in class 19 is null and void. The Respondents filed a joint answer praying for a dismissal of the Appellant's action.

The case proceeded to trial on 10 issues. After trial the learned Additional District Judge has delivered a judgment in favour of the Respondents. Being aggrieved by the said judgment dated 23.11.2000 the Appellant has appealed to this court.

The Appellant's position was that since 1959 the Appellant was using the Trade Mark "Duro" on readymade garments which were manufactured and sold by the Appellant for men, women and children and the Appellant had registered the said Trade Mark "Duro" under trade mark No 25921 dated 17th July 1964 in respect of "readymade garments" and by an oversight he could not renew the said Trade Mark after July 1978 but he continued to use the said Trade Mark in respect of the goods manufactured and sold by him. The Appellant further averred that the 1st to 3rd Respondents were wrongly and unlawfully using and advertising the mark "Duro" for PVC Water and Conduit pipes from 1980 and they had wrongly and unlawfully registered the mark "Duro" in their name under Trade

Mark No 41616 dated 11th July 1980 in class 19 and the Appellant's application for the registration of the Trade Mark "Duro" in class 19 had been refused by the 4th Respondent on the basis that the said Trade Mark has been registered in the name of 1st to 3rd Respondents in terms of Trade Mark Registration No 41616. The Appellant further averred that the said Trade Mark Registration No 41616 could not have been registered in terms of Section 99 and 100 of the Code of Intellectual Property Act and hence it should be expunged under Section 172(2) of the Code of Intellectual Property Act.

The Respondent's position was that the 1st to 3rd Respondents commenced business in or about 1980 manufacturing selling and marketing rigid PVC pipes for water and conduit tubing under the name style and firm of "Duro Pipe Industries" and in or about 11th July 1980 they applied for the registration of the said Trade Mark and since there was no objections the Registrar of Trade Marks, Patent and Designs duly registered the said Trade Mark in class 19.

The Appellant has closed his case leading the evidence of 03 witnesses and producing the documents marked P 1 to P 22 and the Respondents have closed their case leading the evidence of 01 witness and producing the documents marked V 1 to V 13.

It is apparent from the said evidence that the application made by the Appellant for registration of the said Trade Mark has been refused on the basis that the said Trade Mark has already been registered under class 19 in the name of 1st to 3rd Respondents. I have carefully considered the evidence led in this case. According to the evidence it is clear that the Application of the Appellant for the registration of the said Trade Mark has been correctly and lawfully refused by the

4th Respondent. At the time of making the said Application for registration, the 1st to 3rd and the 5th Respondent were the lawful owners of the said Trade Mark. The Appellant has admitted that he could not renew the said Trade Mark after July 1978. Hence I am of the view that the learned Additional District Judge has rightly concluded that the Appellant was not entitled to a judgment as prayed for in the plaint.

In the said circumstances I see no reason to interfere with the said judgement of the learned Additional District Judge delivered on 23.11.2000. Therefore I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal