IN THE COURT OF APPEAL OF THE DEMCRATIC SOCIALIST REPUBLIC OF SRI LANKA

C.A.928/97(F)
D.C.Embilipitiya
4229/Claim

W.M.A. Jayawardena
Sudugalhena, Jadura,
Panamura

Plaintiff

W. Gunasena
Divisional Officer,
Panamura Agrarian Srices Office
Panamura

Defendant

AND NOW BETWEEN

W.M.A. Jayawardena
Sudugalhena, Jadura,
Panamura

Plaintiff-Appellant

W. Gunasena
Divisional Officer,
Panamura Agrarian Srices Office
Panamura

Defendant Respondent

BEFORE : **Deepali Wijesundera J., and**
M.M.A. Gaffoor J.,

COUNSEL **W. Dayaratne P.C., for the Plaintiff Appellant**
Charith Galhena for the Defendant Respondent

ARGUED ON: 22.06.2015

DECIDED ON: 15.12.2015

M.M.A. Gaffoor J.,

The Plaintiff Appellant (hereinafter referred to as "the Plaintiff") instituted this action in the District Court of Embilipitiya against the Defendant/Respondent (hereinafter referred to as "the Defendant") seeking inter alia for the following reliefs stating that:

i) **The Plaintiff Appellant was the owner of the lands called "Koratuwa Kumbura" and "Gala Kumbura" and his brother, Sumanasena was the owner of the lands called "Karawgahamula Kumbura" and "Ninda kumbua: The above lands were cultivated by the plaintiff appellant.**

ii) **While the Plaintiff Appellant was possessing the above lands the Defendant Respondent and several persons in the village have unreasonably disturbed the Plaintiff-Appellant's possession;**

iii) **The Plaintiff says that the Defendant was the Divisional Officer of the "Panamura" Agrarian Services Office, who on or about 4.3.1990 prohibited him from cultivating these lands unreasonably and illegally;**

iv) **Subsequently the Defendant Respondent has divided and allocated the above lands to several village people on or around 6.5.1990 illegally and this action is completely ultra vires;**

v) **Subsequently the Defendant has tried to change the name of the Plaintiff in respect of his lands in the Agricultural Lands Registers in order to dispossess by him ;**

vi) **Being aggrieved by the said facts, the Plaintiff lodged an action before the Primary Court of Embilipitya bearing No. 15906;**

vii) **The Plaintiff became entitled to possess his lands after the order of the Primary Court of Embilipitiya;**

viii) **The Plaintiff sent a letter of demand to the Defendant Respondent for damages caused by the Defendant which he assessed at Rs. 50.000/-;**

ix) **The Defendant has not paid the sum of Rs. 50,000/- claimed in the aforesaid letter of demand to him; and**

x) **Therefore the Plaintiff filed this action to recover the sum of Rs. 50,000/- as damages and costs;**

The Dehendant by his answer dated 12.12.1992 denied the allegations of the Appellant and stated that he has acted within the purview of the powers vested with him as Divisional Officer and the issue is an administrative act.

He further raised a preliminary objection that the Plaintiff, when he filed a case against a State Officer, he must make the Hon. Attorney General a party to this case which he failed. He further made a claim in reconvention in a sum of Rs. 50.000/- as damages.

The Plaintiff filed his Replication to Defendant's answer and the cross claim. and prayed for the rejection of the answer and the cross claim.

The trial of this case commenced with 2 Admissions and 15 Issues. The Issues 1 – 7 were raised on behalf of the Plaintiff and Issues 8 to 15 were raised by the Defendant.

At the trial the Plaintiff Appellant and five witnesses gave evidence on his behalf and closed the case. In his evidence the Plaintiff stated that he was in occupation of the lands, which were owned by him and his brother and that the Defendant has unlawfully decided to prohibit the Appellant from cultivation of the lands. The Plaintiff further pleaded that the Defendant has altered the entries in the Register to deny the Appellant his lawful cultivation of the lands.

At the conclusion of the trial the learned trial Judge by his judgment dated 20.08.1997 dismissed the Plaintiff's action and the claim in reconvention of the Defendant.

The plaintiff has preferred this appeal from the judgment.

The Plaintiff has described the grounds of appeal as follows:

a) **That the learned District Judge has not considered the facts of the case and came to an erroneous conclusion and erred in law:**

b) **That the learned District Judge came to an erroneous conclusion and erred law by concluding that the**

plaintiff's evidence is inadmissible due to unsoundness of mind of the Plaintiff;

c) That the learned District Judge came to a erroneous conclusion and erred in law that the cause of action is a dispute relating to a paddy field;

d) And therefore to vacate the judgment entered on 20.08.1997 nd to enter judgment in his favour

It was argued by Counsel that the action of the Plaintiff in the original court the alleged unlawful and ultra vires decision to prohibit the Appellant from cultivating the paddy lands referred to in the plaint but there was no specific reference to metes and bounds of such lands.

Although the Plaintiff urged that the lands refered to in the Plaint is either owned by him alone or together with his brother but he has failed to prove the ownership, He did not produce a single document or oral evidence. During the examination in chief the Plaintiff once stated that the land belonged to the Land Reform Commission. Rev. Kudagoda Hemarathna Thero giving evidence on behalf of the Plaintiff stated that the Koratuwe Kumbura was owned by the temple of Wallgoda and the Plaintiff and another were the tenant cultivators. The witness further stated that subsequent to a dispute as to the ownership and the tenancy rights. The Divisional Officer held an inquiry to which the witness attended. As a result of the finding at the inquiry the cultivation of the land was stopped. Prior to the dispute, this land was cultivated by Sumanarathna and his occupation was

disturbed by the Plaintiff and that was the beginning of the present action.

The trial Judge has misdirected himself in conducting the trial. On a perusal of the prayer of the Plaintiff the Plaintiff has prayed for the recovery of Rs. 500,000/- being damages and costs of action. He has not asked for any other relief though the case is registered as a land case, It is in fact a money claim. The Plaintiff has narrated the incidents of the interruption of his cultivation by the Defendant and finally in paragraph 10 of the plaint he says "due to the unlawful and illegal actions of the Defendant he sustained damages in a sum of Rs. 50,000/- and that he sent a letter of demand."

Therefore he says in para. 11 of the Plaint that a cause of action had accrued to him to recover Rs. 50,000/- from the Defendant. Hence. for all purposes it is a money claim and not a land case. In this respect it is to be noted that the character of the action should not be changed. The true definition of "cause of action" is the action on the part of the Defendant which gives the Plaintiff his cause of complain. The Plaintiffs cause of complain is the damages caused to him by the alleged unlawful action of the Defendant and nothing to do with the rights of ownership or possession of the land mentioned in the Plaint.. Further the Plaintiff has not given a schedule of the land in the plaint if this case is to be treated as a land case. I am therefore of the view that this case is not a case in respect of the rights to the land but a money claim only, and as such the court need not go into the evidence in respect of the land mentioned in the Plaint.

It is also to be noted that there is no dispute between he Plaintiff and the Defendants to the right to the said land. The Defendant has not claimed any rights to the land. Therefore, this case cannot be treated as a land case. As stated above, the character of the action cannot be changed. A money claim, in the present case, has been changed to a land case, and the trial court has allowed the evidence to go on that respect. The trial Judge should have limited the evidence only in respect of the claim of Rs. 50,000/- claimed by the Plaintiff.

As regards the contention that the Attorney General is not made a Defendant in this case, which is filed against the Defendant, who is a State Officer. This contention cannot be sustained as the case has been filed against the Defendant not as a State Officer but as a private person (see paras. 2 and 3 of the Replication by the Plaintiff). Furthermore, in the Primary Court case No. 15906, the parties to the dispute was the Plaintiff and the Defendant. The Plaintiff's position is that the Defendant maliciously took action against him to stop the cultivation. If the Plaintiff says that the Defendant has personally acted against him, the liability is personal and therefore the Attorney General cannot be made a Defendant and to take the defence of the action under Section 463 of the Civil Procedure Code. But if the Defendant has acted in his official capacity only a notice of action under Sec 461 of the Civil Procedure Code should be given. In this case, the evidence of the Plaintiff and his witness Jayawardena's evidence

clearly how that the Defendant's actions were on personal revenge. I therefore reject the contention that the Attorney General should be made a party Defendant in this case. The only questions that remains to be answered are "whether the Plaintiff has proved his claim of Rs. 50,000/- s damages and the Defendant has proved his claim in reconvention.

The evidence of the Plaintiff has not satisfactorily established any damaged caused to him to claim Rs 50,000/- as compensation thereto, except for certain expenses incurred in respect of the Primary Court case, he has not incurred any substantial amount, other than the Primary Court case expenses. The plaintiff has thus failed to establish by way of evidence, the damages claimed by him . On the other hand the Defendant has claimed Rs. 50,000/- as a cross claim in his Answer, But in his evidence he said that the Plaintiff defamed me by burning an effigy of any figure and caused me pain in mind and therefore I assessed my compensation at Rs. 50,000/-. But this evidence is not proved by any other independent evidence.

Regarding the damages claimed by the Plaintiff and the defendant, the decision of the trial Judge is very reasonable. The learned Judge has held that the Plaintiff has failed to prove that the Defendant maliciously caused damages to him and the Defendant has also not produced sufficient evidence to establish his cross claim and he has dismissed Plaintiff's action with costs

and rejected the cross of the Defendant. I do not want to interfere with the findings of the learned trial Judge,

This appeal is without any merit and is liable to be dismissed. Both parties to bear their own costs,

JUDGE OF THE COURT OF APPEAL

Wijesundera J.,

I agree.

JUDGE OF THE COURT OF APPEAL