RUBERU AND ANOTHER
v.
WIJESOORIYA

COURT OF APPEAL
U. DE Z. GUNAWARDANA, J.
C.A. 130/97
D.C. COLOMBO 16738/L
OCTOBER 07, 1997.

Ejectment of a licensee – obtaining a declaration of title to the land – Is it a condition precedent – S. 116 Evidence Ordinance – Amendment altering the scope of the action – Civil Procedure Code S. 46 (2) – Duty to give reasons.

The learned District Judge ordered the amendment of the plaint on the basis that the plaintiff-appellant cannot eject a licensee without proving title and first getting a declaration of title in respect of the premises in suit.

On appeal.

Held:

(1) Whether it is a licensee or a lessee, the question of title is foreign to a suit in ejectment against either. The licensee (defendant - respondent) obtaining possession is deemed to obtain it upon the terms that he will not dispute the title of the plaintiff-appellant without whose permission he would not have got it. The effect of S. 116 Evidence Ordinance is that if a licensee desires to challenge the title under which he is in occupation he must first quit the land. The fact that the licensee or the lessee obtained possession from the plaintiff-respondent is perforce an admission of the fact that the title resides in the plaintiff.

(2) It is axiomatic that the plaintiff in any action is precluded from amending the plaint to enlarge the scope of the action or alter the basis thereof although he is at liberty to diminish or reduce its scope though an amendment of the plaint.

Per Gunawardana, J.

"If the plaint is amended as directed one can be sure of one thing, that is that the amended plaint ought to be rejected for certain for the power to amend pleadings is subject to the limitations imposed by S. 46 (2) CPC that an amendment cannot be made which has the effect of converting an action of one character into an action of another or inconsistent thereafter."

Per Gunawardana, J.

"It is to be observed that in this case although the learned Additional District Judge had stated that the plaint "was defective" she had not been gracious enough to give the faintest idea of the reasons that prompted her to say so. The reasons ought be explicitly spelt out and should not be shrouded in obscurity ..... from the fact of the absence of express reasons for the additional District Judge's view, the Superior Court is entitled to infer that the learned District Judge had no good reasons for her decision."

An APPLICATION for Leave to Appeal, Leave been granted.

Sanath Jayatilake for the petitioner.

Wijedasa Rajapakse with *T. Bandara* for the defendant-respondent.

Cases referred to:

1. *Padifield v. Minister of Agriculture* 1968 AC 997.

Cur. adv. vult.

November 17, 1997

U. DE Z. GUNAWARDANA, J.

This is an application for leave to appeal against an order dated 10.06.1997 made by the learned Additional District Judge of Colombo whereby she had ordered the amendment of the Plaint presumably on the basis that the plaintiff-appellant cannot eject a licensee without proving title and first getting a declaration of title in respect of the land or premises in suit. At the hearing before me, i.e. on 07.10.1997, the learned counsel for the defendant-respondent – agreeing to the granting of leave – the leave was accordingly granted and the matter was thereafter argued. The learned Additional District Judge's order in this regard is not as clear as one would have wished it to be and reads thus: '9 වන විසඳිය යුතු ප්‍රශ්නය :- පැමිණිලිකරු පැමිණිල්ල අවසර ලාභියෙකු නෙරපීමේ පදනම මත ඉදිරිපත් කර ඇති හෙයින්, පෙළපත හා හිමිකම් ප්‍රකාශයක් නොමැතිව නඩුව පවත්වා ගෙන යාමට පැමිණිලිකරුට අයිතියක් තිබේද? මෙම විසඳිය යුතු ප්‍රශ්නය සම්බන්ධයෙන් ලිඛිත දේශණ

සහ පැමිණිල්ල සළකා බැලීමේදී පැමිණිල්ලේ ප්‍රමාද දෝෂයක් ඇතිබව පෙනී යයි. එබැවින් මෙම සඳහන් කරුණු මත පැමිණිල්ල සංශෝධනය කිරීමට නියෝග කරමි.

The learned Additional District Judge in the excerpt of her order reproduced above, had stated that the plaint "appears to be defective" but stops short of explicitly pinpointing as to what exactly is the defect. But reading between the lines, so to speak, one gets the sense of what the learned Additional District Judge means to say, i.e. that as pointed out above – the obtaining a declaration of title to the land in suit is a condition precedent to the ejectment of a licensee therefrom. Perhaps, one cannot conceive of a more erroneous view than that. That – in an action by the person who granted the licence or permission to eject a licensee – the question of title (of the plaintiff) is wholly irrelevant is a rudiment of the law; a rule partaking of the character of a first principle. Of course, the position of the defendant-respondent outlined in the answer, according to the submission made to this court on 07.10.97 by the counsel for the defendant-respondent, was that the defendant-respondent was a lessee under the plaintiff-petitioner. (A copy of the answer has not been made available to us).

But whether it is a licensee or a lessee, the question of title is foreign to a suit in ejectment against either. The licensee (the defendant-respondent) obtaining possession is deemed to obtain it upon the terms that he will not dispute the title of him, i.e. the plaintiff-appellant without whose permission, he (the defendant-respondent) would not have got it. The effect of the operation of section 116 of the Evidence Ordinance is that if a licensee desires to challenge the title under which he is in occupation he must, first, quit the land. The fact that the licensee or the lessee obtained possession from the plaintiff-appellant is perforce an admission of the fact that the title resides in the plaintiff. No question of title can possibly arise on the pleadings in this case, because, as the defendant-respondent has stated in his answer that he is a lessee under the plaintiff-appellant, he is estopped from denying the title of the plaintiff-appellant. It is an inflexible rule of law that no lessee or licensee will ever be permitted either to question the title of the person who gave him the lease or the licence or the permission to occupy or possess the land or to set up want of title in that person, i.e. of the person who gave the licence or the lease. That being so, it is superfluous, in this action, framed as it is on the basis that the defendant-respondent is a licensee, to seek a declaration of title.

Furthermore, the direction of the learned Additional District Judge to amend the plaint and seek a declaration of title, if followed, will in fact, be self-destructive, from the standpoint of the plaintiff-appellant, for no amendment of the plaint can be accepted which alters the scope of the action by enlarging it, which rule too is as basic as the principle that in an action by the person who gave the licence to eject the licensee there is, perhaps nothing more irrelevant than the question of title of the plaintiff, i.e. the person who granted the licence. In any event, it is axiomatic that the plaintiff in any action, for that matter, is precluded from amending the plaint to enlarge the scope of the action or alter the basis thereof although he is at liberty, in appropriate circumstances, to diminish or reduce its scope through an amendment of the plaint. For example, the plaint in a *rei vindicatio* action where the declaration of title is sought, can be subsequently altered to a possessory action - for *rei vendicatio* action encompasses both title and possession but not vice versa, i.e. one cannot amend the plaint in a possessory action and seek a declaration of title to the property in question not only because the substance of the two actions are different but also because the scope of a *rei vindicatio* action is larger than that of a possessory action.

If the plaint is amended as directed by the learned Additional District Judge one can be sure of one thing if of no other, that is, that the amended plaint ought to be rejected for certain for the power to amend pleadings is subject to the limitation imposed by section 46 (2) of the Civil Procedure Code that an amendment cannot be made which has the effect of converting an action of one character into an action of another or inconsistent character.

For the aforesaid reasons the said order of the learned Additional District Judge dated 10.06.1997 is hereby set aside. Further, she is directed to try the action on the issues that had already been raised except that she is ordered to answer issue No. 09 in conformity with this order. The defendant-respondent is ordered to pay the plaintiff-appellant costs in a sum of Rs. 5,250/-.

I wish to add this as somewhat a postscript in order to impress upon the judges in the trial courts their duty to give reasons for their decisions – for their decisions are subject to review by Superior Courts. But for a challenge to be mounted the reasons are obviously essential. It is to be observed that in this case although the learned Additional

District Judge had stated that the plaint "was defective" she had not been gracious enough to give the faintest idea of the reasons that prompted her to say so. The reasons ought be explicitly spelt out and should not be shrouded in obscurity. It is highly desirable that reasons are given for decisions not only because that will facilitate matters from the standpoint of the Appellate Court in considering the correctness of the impugned decision but also because existence of reasons will tend to support the idea that justice is seen to done and done on a rational basis. If there has been a failure on the part of the trial Judge to act or decide correctly – furnishing of reasons will often provide subsequent grounds of appeal. The reasons will immeasurably assist the Court of Appeal in its task of scrutinising the legality of the order made in the courts below for if reasons are right it may safely be concluded that decision based thereon is also right – although one cannot wholly rule out the prospect of there being right (ultimate) decisions despite the fact that the reasons therefor are wrong.

From the fact of the absence of express reasons for the learned Additional District Judge's view the Superior Court is entitled to infer that the learned trial judge had no good reasons for her decision. It is said that an authority or body, upon which it is incumbent to give reasons for its decision, fails to give reasons because it has none to give. That was the view expressed in the landmark decision in *Padfield v. Minister of Agriculture*[1] which, of course, concerned the correctness or otherwise of the decision not of a court of law, as such, but that of a minister where, too, no reasons had been given for the minister's decision. Above all, reasons are necessary to show that the court has acted lawfully.

Appeal allowed.