
**RAVINDRAN AND ANOTHER
VS
SOYSA AND ANOTHER**

COURT OF APPEAL.
SOMAWANA, J. (P/CA) AND
WIMALACHANDRA, J.,
CALA 80/2004.
DC MT. LAVINIA 1351/00/L.
JULY 22, 2005.

*Civil Procedure Code - Sections 75, 75(d) General denial of averments in
plaint - Is it a denial contemplated under section 75(d) ?*

HELD:

- (1) There is no reference either denying or admitting the averments in paragraphs 6/7 of the plaint. Nowhere does the defendant-petitioners in their answer admit averments in paragraphs 2-7, 12 and 17 of the plaint, there is no denial of the averments therein other than a general denial in paragraph 1 in the answer.
- (2) Where a defendant does not deny an averment in the plaint - he must be deemed to have admitted that averment.

Per Somawansa, J. :

"Section 75 which deals with the requirements of an answer does not contemplate a general denial of the averments in the plaint but requires a statement admitting or denying the several averments in the plaint."

APPLICATION for Leave to Appeal from an Order of the District Court of Mt. Lavinia:

Cases referred to :

1. *Fernando vs. Samarasekera* - 49 NLR 285.
2. *Lokuhamy vs. Sirimala* - (1892) 1 SCR 326
3. *Fernando vs. The Ceylon Tea Company Ltd.* (1894) 3 SLR 35
4. *Mudaly Appuhamy vs. Tikerala* (1892) 2 CLR 35

Prinath Fernando for petitioner,
Respondents absent and unrepresented.

Cur. adv. vult.

July 22, 2005

ANDREW SOMAWANSA, J. (P/CA)

This an application for leave to appeal from the order of the learned District Judge of Mt. Lavinia dated 11.02.2004 permitting the plaintiffs-respondents' application to have averments in paragraphs 2, 3, 4, 5(i), 5(ii), 6, 7, 10, 12 and 17 in the answer of the defendants - petitioners recorded as admissions.

As there was no response to the notices issued to the plaintiffs-respondents on several occasions the matter was fixed for inquiry and the counsel for the defendants-petitioners moved to tender written submissions and the same has been tendered.

It is contended by counsel for the defendants-petitioners that the aforesaid order dated 11.02.2004 is wrong since the defendants-petitioners have denied all averments in the plaint by averments in paragraph 01 of their answer. He submits that the words in paragraph 01 of their answer or their meaning will not have any effect if the learned District Judge's order is allowed to stand. I am unable to agree with this submission for section 75 of the Civil Procedure Code which deals with the requirements of an answer does not contemplate a general denial of the averments in the plaint but requires a statement admitting or denying the several averments of the plaint. The relevant part of section 75 of the Civil Procedure Code applicable to the issue at hand is sub-section 'd' which reads as follows :

(d) "a statement admitting or denying the several averments of the plaint, and setting out in detail plainly and concisely the matters of fact and law, and the circumstances of the case upon which the defendant means to rely for his defence ; this statement shall be drawn in duly numbered paragraphs, referring by number, where necessary, to the paragraphs of the plaint".

In answer to averments in paragraphs 2, 3, 4, 5 (i), 5 (ii), 10, 12 and 17 in the plaint the defendants-petitioners by paragraphs 3, 4, 5, 7, 9 and 12 in their answer states as follows :

3. පැමිණිල්ලේ දෙවෙනි ඡේදයට පිළිතුරු දෙමින් කියා සිටිනුයේ. එම කරුණු පැහැදිලිව නොදන්නා අතර. එය ඔප්පු කළ යුතු බව ය.

4. කෙටිත, හතරවෙනි. ඡේද හා පස්වන ඡේදයෙහි 1 අනුඡේදයෙහි වාක්‍යල හා අපහැදිලි වන අතර. නිසි ලෙස පිළිතුරු දිය නොහැක. කවුරුත් විකිනිකරුවන්ට අහිමිකර නොවන සේ කියා පිටිනුයේ. එම කරුණු නොදන්නා බව හා සනාථ කළ යුතු බව ය.
5. පස්වන ඡේදය II අනුඡේදයේ ද හතරවෙනි ඡේදවලද සඳහන් කරුණු නොදන්නා බවත්, එම සනාථ කළ යුතු බවත්. ප්‍රකාශ කර පිටිනු ලැබේ.
7. දහවෙනි ඡේදයේ දක්වා ඇති කරුණු පිළිගනු ලැබේ.
9. දොළොස් වෙනි ඡේදයේ කරුණු නොදන්නා අතර සනාථ කළ යුතු ය.
12. දහතරවෙනි ඡේදයෙහි සඳහන් පිළිබඳව නොදන්නා හෙයින් එම පිළිබඳව අදාළ මෙහි කරුණු නොදනි සනාථ කළ යුතු ය.

It is to be seen that there is no reference either denying or admitting the averments in paragraphs 6 and 7 of the plaint. While conceding that nowhere do the defendants-petitioners in their answer admit the averments in paragraphs 2, 3, 4, 5, 6, 7, 12 and 17 of the plaint, there is also no denial of the averments therein other than a general denial in paragraph 1 in the answer.

In *Fernando vs. Samarasekara*⁽¹⁾ it was held :

"Where a defendant does not deny an averment in the plaint he must be deemed to have admitted that averment".

The facts in that case were as follows :

It appears from the plaint that Miguel Appuhamy died leaving the third to the eighth plaintiffs as his heirs. While not denying this averment in his answer the appellant goes on to say that he makes no claim to the share allotted to Miguel Appuhamy. It is admitted by the counsel for the respondents that there is no evidence that the plaintiffs are the heirs of Miguel Appuhamy. He however, relies on the fact that it was never denied or disputed throughout the proceedings.

Per Basnayake, J. :-

"Section 75(d) of the Civil Procedure Code requires that the answer should contain a statement admitting or denying the several averments of the plaint, and setting out in detail plainly and concisely the matters of fact and law, and the circumstances of the case upon which the defendant means to rely for his defence. If the defendant disputed such an important

averment the proper place for him to raise it was in his answer which he was free at any stage of the proceedings to amend with the leave of Court. The provisions of section 75 are imperative and are designed to compel a defendant to admit or deny the several allegations in the plaint so that the questions of fact to be decided between the parties may be ascertained by the Court on the day fixed for the hearing of the action. A defendant who disregards the imperative requirements of this section cannot be allowed to take advantage of his own disobedience of the statute. To permit such a course of conduct would result in a nullification of the scheme of our Code of Civil Procedure.

We hold therefore that the appellant cannot take this objection in appeal. His failure to deny the averment in accordance with the requirements of the statute must be deemed to be an admission by him of that averment.

Learned counsel for the appellant submitted to me in Chambers after we reserved judgment the case of *Lokuhamy vs. Sirimala*⁽²⁾ and *Fernando vs. The Ceylon Tea Company Ltd.*⁽³⁾ These cases have no bearing on the matter we have to decide in the present case. They deal with the effect of the failure of a plaintiff to deny by replication the statements made by a defendant in his answer.

The appeal is dismissed with costs."

Again in *Mudaly Appuhamy vs. Tikerala* at 35 it was held :

"An objection to a pleading for want of particulars is not a matter to be set up by plea. A party requiring more particulars should, before pleading to the merits, take the objection by way of motion to take the pleading off the file".

It is to be seen that the learned District Judge has considered the provisions contained in section 75(d) of the Civil Procedure Code as well as the authorities applicable and has come to a correct finding.

For the above reasons, I see no basis to interfere with the order of the learned District Judge and accordingly leave to appeal is refused and stands dismissed. I make no order as to costs.

WIMALACHANDRA, J., — I agree,

Application dismissed.