KARIYAWASAM
v
RAJASURIYA

COURT OF APPEAL
EKANAYAKE, J.
CALA 226/2002 (LG)
DC COLOMBO 18678/99/L
MAY 5, 2006
JULY 7, 18, 2006

Civil Procedure Code – Section 75 (d) – Section 76 – Averments in the plaint – Neither denied nor accepted – Are they deemed to be admissions? – Specific Sinhala formula to be used in denying?

Held:

(1) Answer reveals that the defendant had jointly and severally denied all the other averments in the plaint except those that are specifically admitted.

Per Chandra Ekanayake, J.

"In the light of the above I am unable to hold the view that any specific mention about the averments with regard to the other paragraphs of the plaint would be necessary or that would be a mandatory requirement".

(2) What has been made mandatory in Section 75 (d) is that an answer should contain a statement admitting or denying the several averments in the plaint. In the answer in paragraph 1, it has been specifically averred that the rest of the averments of the plaint are denied jointly and severally except what is specifically admitted therein The Civil Procedure Code does not provide any other requirement that should be complied with when denying averments of a plaint, except when disputing the averments in the plaint as to the jurisdiction of the Court (Section 76).

(3) As regards to a specific Sinhala formula to be used – Sections embodied in Chapter IX of the Code re-filling answer are self explanatory.

APPLICATION for leave to appeal from an order of the District Court of Colombo with leave being granted.

Cases referred to:

(1) *Hassan* v *Iqbal* 2001 3 Sri LR 147.

(2) *Fernando* v *The Ceylon Tea Corporation* 3 SCR 35.

G.R.D. Obeysekera for defendant-petitioner.
Rohan Sahabandu for plaintiff-respondent.

May 9, 2007

CHANDRA EKANAYAKE, J.

The defendant-petitioner (hereinafter sometimes referred to as the defendant) by his petition dated 14.06.2002 had sought *inter-alia* leave to appeal against the order of the learned District Judge of Colombo dated 30.05.2002 (X) made in D.C. Colombo Case No. 18678/L.

The plaintiff-respondent (hereinafter sometimes referred to as the plaintiff) by plaint dated 04.09.1999 had sought *inter alia* declaration of title to the property morefully described in the 4th scheduled thereto, ejectment of the defendant and all those holding under her there from and for restoration of possession thereof and damages as prayed for in sub-paragraphs (අ) of the prayer to the plaint marked P2. The defendant by his answer (P1) whilst opposing the claims of the plaintiff had prayed for a dismissal of the plaintiff's action more particularly on the grounds averred in paragraph (7) thereof namely: by virtue of having acquired prescriptive title due to uninterrupted and continuous possession of the subject matter by herself, husband and father-in-law for over 50 years had acquired prescriptive title to the same.

When the case was taken up for trial on 3.05.2002 after recording 2 admissions application had been made by the plaintiff's Counsel as paragraphs 21, 23-26 and 29-32 were neither denied nor accepted in compliance with the provisions of Section 75(d) of the Civil Procedure Code the averments contained in paragraphs 21, 23-26 and 29-32 should be recorded as admissions. This application being opposed to by the Counsel for the defendant, the learned trial Judge after hearing submissions made by both parties had ordered that the averments contained in the aforesaid paragraphs of the plaint should be recorded as admissions. This is the order this leave to appeal application had been preferred from.

By the order of this Court dated 30.11.2004 leave to appeal had been granted on the following questions:

(i) Whether there is any specific Sinhala formula to be used in an answer of a defendant when the defendant intends to deny any or all the averments set out in the plaint?

(ii) When the answer is read as a whole, if it is clear that the defendant disputes the truth of the averments set out in the plaint, is a trial Judge justified in recording admissions as the trial Judge in this case has done?

Perusal of the answer of the defendant reveals that she had jointly and severally denied all the other averments contained in the plaint except those are specifically admitted in the answer – vide paragraph 1 of the answer dated 04.06.2000 (P1). The said paragraph 1 is to the following effect:

"මෙම විත්තිකාරිය තම උත්තරයේ විශේෂයෙන් පිළිගන්නා කරුණු හැර පැමිණිල්ලේ සඳහන් අන් සියලුම කරුණු එක්ව හා වෙන් වෙන්ව ප්‍රතික්ෂේප කරයි."

In the light of the above I am unable to hold the view that any specific mention about the averments with regard to the other paragraphs of the plaint would be necessary or that would be a mandatory requirement. In the present case the main basis of the learned judge's finding to record the averments contained in paragraphs 21, 23 to 26 and 29 to 32 of the plaint was that there was no specific denial of the same in the answer.In view of the above the necessity has now arisen to consider the provisions of Section 75(d) of the Civil Procedure Code. Section 75(d) thus reads as follows:

"A statement admitting or denying the several averments of the plaint, and setting out in detail plainly and concisely the mattersof 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."

What has been made mandatory by the above sub-Section is that an answer should contain a statement admitting or denying the several averments of the plaint. In the answer filed by the defendant in this case by paragraph 1 it has been specifically averred that the rest of the averments of the plaint are denied jointly and severally except what is specifically admitted therein. I am of the view that this is sufficient compliance of the requirements envisaged in Section 75(d) of the Civil Procedure Code and further Civil Procedure Code does not provide any other requirement that should be complied with when denying averments of a plaint, except when disputing the averments in the plaint as to the jurisdiction of the Court (Vide Section 76).

In this regard assistance could be derived from the decision of this Court in *Hassan* v *Iqbal*[1]. In this case Justice Weerasooriya has held that (Udalagama, J. agreeing):

> "Though in the English Courts allegations of fact not denied specifically or by necessary implication are taken to be admitted, in the Code there is no such provision and the non-denial of an allegation is not taken as an admission of it."

Per Weerasooriya, J. referring to the decision in *Fernando* v *The Ceylon Tea Company Limited*[2] at 152 and 153 of the said Judgment:

> "It has been held that although in the English Courts allegations of fact not denied specifically or by necessary implication are taken to be admitted, in our Code there is no such provision and the non-denial of an allegation is not taken as an admission of it (Vide *Fernando* v *The Ceylon Tea Company Ltd.* (*supra*)"

What needs consideration now is the two questions raised by this Court when granting leave in this case. I am inclined to hold the view that both questions have to be answered in the negative for the following reasons:-

(a) with regard to the first question to wit – "specific Sinhala formula to be used ....." – sections embodied in Chapter IX of the Civil Procedure Code re-filing answer are self explanatory.

(b) For the reasons given above – No.

For the foregoing reasons I conclude that the learned trial Judge was in grave error when she held that the averments contained in paragraphs 21, 23 to 26, 29 to 32 should be recorded as admissions and I proceed to set aside the impugned order of the learned District Judge dated 30.05.2002. Accordingly this appeal is hereby allowed. In all circumstances of the case no order is made with regard to costs.

Appeal allowed.