FERNANDO
VS
SILVA

COURT OF APPEAL,
AMARATUNGA, J.,
WIMALACHANDRA, J.
CALA 260/2003 (LG)
D. C. COLOMBO 19452/L
OCTOBER 14, 2004

Civil Procedure Code - Section 31(1), Section 75(d)-Averments in Plaint not specifically denied - Sinhala word "ප්‍රතික්ෂේප කර නැත" is not the only word which can convey in Sinhala what is meant by the English word "Deny" - Substance more important than form?-Courts to have realistic approach.

As the Defendant had not denied the contents of paragraphs 4, 8, 9 and 13 of the Plaint, the trial Court recorded the aforesaid paragraphs as admissions. The Defendant had while answering the said paragraphs had stated that he - මෙකු පිළිබඳ එකඟ නොවන බව කියයි.

HELD:

Per Amaratunga J.,

The Civil Procedure Code was enacted in English. Upto date there is no official translation of the Code although there is a translation issued by the Official Languages Department. At the time the language of the Courts was English the pleadings were in English. Therefore it was easy to use the word "Deny" in an answer. Now the pleadings are in Sinhala or in Tamil, however in the absence of a specific Sinhala word, officially recognised for the purpose of Section 75(d) Court cannot insist that only a particular Sinhala word shall be used when a Defendant means to 'deny' any averment.

(i)   Substance is more important than the form. Whatever is the Sinhala word used to convey the meaning similar to the meaning of the word 'Deny' if it clearly conveys the idea that the Defendant does not accept the correctness of the averments, there is a valid denial for the purposes of Section 75(d) ;

(ii)   When pleadings are prepared in Sinhala in accordance with rules laid down in English, Courts must have a realistic approach and shall not tie down the litigants with technical forms, forgetting importance of substance.

APPLICATION for leave to appeal from the Order of the District Court of Colombo, with leave being granted.

Cases referred to :

1.   *Re. Cherwell* - 8 Ch. D 506

2.   *Wickramatillaka vs Marikkar - (1895) 2 NLR 9 at 12*

Rohana Jayawardena with *Nimal Muttukumarana* for petitioner.

Kuvera de Zoysa with *Sumedha Mahawanniarachchi* for Respondents

Cur adv vult

January 11, 2005
GAMINI AMARATUNGA J.

This is an appeal with leave granted by this Court. The subject matter of the appeal is the order of the learned trial Judge recording paragraphs 4, 8, 9 and 13 of the plaint as admissions. That order had been made on the basis that the defendant had not denied the contents of those paragraphs.

It is pertinent to set out the facts relevant to the plaintiff. The plaintiff filed action against the defendant to get a declaration of her title to the land and the buildings described in the schedule to the plaint and to get an order ejecting the defendant therefrom. She also sought a declaration that a Deed of Declaration executed by the defendant was null and void. In paragraph 2 and 3 of the plaint the plaintiff set out the manner in which she got title to the property. The Defendant in his answer denied (පුකිෂේප කර සිටි) the averments in those paragraphs. In paragraph 4 of the plaint the plaintiff averred that in view of what have been stated in paragraphs 2 and 3 she became the owner of the property in suit. Answering the said averment No. 4, the defendant has stated that he challenged the plaintiff to prove it (සාධ්‍ය කරන ලෙස අභියෝග කර සිටි). In his answer the defendant denied paragraphs 5, 6 and 7 of the plaint (පුකිෂේප කර සිටි). In paragraph 8 of the plaint the plaintiff averred that when the defendant forcibly entered her property she made a complaint to the police. In paragraph 9 the plaint alleged that the defendant had fraudulently executed a Deed of Declaration in respect of the land in suit. Answering the paragraphs 8 and 9 of the plaint together, the defendant

has merely stated that the plaintiff should prove those matters. Further the defendant had denied the contents of paragraphs 10, 11 and 12 of the plaint. In paragraph 13 the plaintiff has stated that under section 35 (1) of the Civil Procedure Code she has a legal right to seek permission to declare the defendants Deed of Declaration null and void. The defendant has challenged the plaintiff to prove that.

When the trial was taken up the plaintiff moved to have averments in paragraph 4, 8, 9 and 13 recorded as admissions on the basis that the defendant has not denied the contents of those paragraphs. The contention of the learned counsel for the plaintiff was that the defendant in answering paragraphs 2, 3, 5, 6, 10, 11 and 12 has used the words (ප්‍රතික්ෂේප කර සිටී) but in answering paragraphs 4, 8, 9 and 13 he has not used those words and accordingly the defendant has admitted those paragraphs. The learned trial Judge having referred to the provisions of section 75(d) of the Civil Procedure Code has ordered to record the averments in paragraphs 4, 8, 9 and 13 of the plaint as admissions.

The relevant portion of section 75(d) of the Civil Procedure Code is as follows. Every answer shall contain the following particulars - "a statement admitting or denying the several averments in 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".

The Civil Procedure Code was enacted in English. Upto date there is no official translation of the Code although there is a translation issued by the Official Languages Department. At the time language of Courts was English, the pleadings were in English. Therefore it was easy to use the word 'deny' in an answer. Now the pleadings are in Sinhala or in Tamil. So in Sinhala pleadings what is the exact Sinhala word to be used to signify denial?

Blacks Law Dictionary defines the English word 'deny' as follows. "To traverse. To give negative answer or reply to. To refuse to grant or accept." The new Hamlyn Encyclopedic World Dictionary gives the following meanings to the word 'deny'. To assert the negative of; declare not to be true; to refuse to believe; reject as false or erroneous; to refuse to recognize or acknowledge; disavow; repudiate; to refuse to accept. (1988 Edition)

The Sinhala word '(පිළිගනිමි සහතික) is not the only word which can convey in Sinhala what is meant by the English word 'deny'. In the absence of a specific Sinhala word, officially recognized for the purpose of section 75 (d) of the Civil Procedure Code, the Courts cannot insist that only a particular Sinhala word shall be used when a defendant means to deny any averment in a plaint. Substance is more important than the meaning of the word 'deny' if it clearly conveys the idea that the defendant does not accept the correctness of the averments set out in the plaint, there is valid denial for the purposes of section 75(d) of the Code. When pleadings are prepared in Sinhala in accordance with rules laid down in English, the Courts must have a realistic approach and shall not tie down litigants with technical forms, forgetting the importance of substance.

In this case, when the answer of the defendant is read as a whole, it is manifestly clear that the defendant has refused to admit the entire case of the defendant. The plaintiff's action is a rei vindicatio action where the burden is on the plaintiff to establish his case. If the defendant does not accept the plaintiff's title, he can without setting up any other defence, challenge the plaintiff to prove his case and remain silent. In the present case the defendant has not set up any defence. He has merely refused to accept the truth of the averments set out in the plaint. The defendant' s prayer is a simple prayer to dismiss the plaintiff's action.

As Jessel M. R. in *Re Chenwell*[11] said It is not the duty of a Judge to throw technical difficulties in the way of the administration of Justice Quoted by Bonser C. J. in *Wickramatilaka vs. Marikar*[9] at 12.

In this case, the defendant by his answer has sufficiently denied the truth of the whole case presented by the plaintiff. Therefore the learned Judge was not justified in recording paragraphs 4, 8, 9 and 13 of the plaint as admissions. Accordingly I allow the appeal and make order deleting those admissions recorded at the trial. The defendant is entitled to costs in a sum of Rs. 5000/-

WIMALACHANDRA J. – I Agree

Appeal allowed