

JAYATILAKA
v
SIGERA AND OTHERS

COURT OF APPEAL
DISSANAYAKA, J. AND
SOMAWANSA, J.
CA 854/95 (F)
D.C. ANURADHAPURA 14801/L
JUNE 5, AND
AUGUST 21, 2002

State land – Declaration of rightful heir to land – No permit granted – Action dismissed – Issues not answered – Court deciding best course of action.

The plaintiff-appellant instituted action seeking a declaration that she is the rightful heir to the land (State) and ejection of the 1st defendant-respondent. Preliminary Issues were raised regarding jurisdiction.

The trial judge did not refer to the preliminary issues nor did he answer any issue, on the basis that the proper course of action to obtain a declaratory decree was by way of a writ from a superior court. The action was dismissed.

Held:

The finding is erroneous; the trial judge court not have rejected the action.

Per Somawansa, J.,

“I am unaware of the existence of any provision in law which would enable the learned District Judge to reject an action in view of a better cause of action one would take in order to obtain the relief one is seeking and it is the duty cast by law on the learned District Judge to decide whether he could grant such relief sought.”

Per Somawansa, J.,

“There is no provision of law which requires him to decide what is the best course of action the plaintiff-appellant should take and advise him on such matters.

APPEAL from the judgment of the District Court of Anuradhapura.

Mahinda Ralapanawa with A.L.L. Jayantha for plaintiff-appellant.

Kuvera de Soysa for 1st defendant-respondent

Eva Wanasundera, Deputy Solicitor General for 2nd and 3rd respondents.

Cur.adv.vult.

October 11, 2002

SOMAWANSA, J.

The plaintiff-appellant instituted the instant action in the District Court of Anuradhapura seeking a declaration that she is the rightful heir to the land in suit more fully described in the schedule to the plaint, that granting of a licence to the 1st defendant-respondent by the 2nd defendant-respondent would be illegal, for ejection of the 1st defendant-respondent and all under her from the said land and the plaintiff-appellant be placed in possession thereof and an interim injunction preventing the 1st defendant-respondent from obtaining a licence in respect of the said land from the 2nd defendant-respondent.

The 1st defendant-respondent's position was that as the land in suit belonged to the State the plaintiff-appellant could not maintain this action.

She also averred that after her father's death her husband applied for a licence and on his death the 2nd defendant-respondent was taking steps to issue a licence in her name. The 2nd defendant-respondent the Divisional Secretary and the 3rd defendant-respondent the Hon. Attorney General also filed answer denying the several averments in the plaint.

At the trial several admissions were recorded among which it was admitted by the 2nd and 3rd defendants-respondents that the plaintiff-appellant's application for a permit was refused by the 2nd defendant-respondent. 30 issues were raised by the parties of which issue nos. 26 and 27 were raised by the 1st defendant-respondent. On an examination of the record it appears that objection on the question of jurisdiction of the Court to hear the case was taken up by the 1st defendant-respondent and the parties were

directed to file their written submissions on the said objection. Only the plaintiff-appellant and the 1st defendant-respondent filed their written submissions and the learned District Judge by his order dated 16.10.1995 held with the 1st defendant-respondent and rejected the action of the plaintiff-appellant. 30

It should be noted here that on an examination of the record it appears that there is no indication as to what the preliminary issue of law that was taken up for hearing. It appears that even the 1st defendant-respondent does not refer to any specific issue in her written submissions. However the plaintiff-appellant has filed her written submissions in relation to issues 26 and 27. They are as follows:

Issue No. 26. Can the reliefs sought by the plaintiff be granted by this Court? 40

Issue No. 27. If not can the plaintiff maintain this action?

At the hearing of this appeal it was contended by the counsel for the plaintiff-appellant that the learned District Judge has failed to answer the relevant issues 26 and 27 which were the only issues in reference to jurisdiction.

It must be noted here that having recorded the admissions and the issues it was incumbent on the learned District Judge to identify and record the issues that were to be tried as preliminary issues of law. However this was not done in the instant case; neither did he refer to any preliminary issues in his order nor did he answer any issue but the learned District Judge rejected the action of the plaintiff-appellant mainly on the basis that the proper course of action to obtain a declaratory decree was by way of a writ obtained from a Superior Court. This I think is an erroneous finding on which the learned District Judge could not have rejected the action of the plaintiff-appellant. The position is aggravated by the fact that the learned District Judge himself in his reasoning admits that where a party could maintain an action for a declaratory decree as well as a right to obtain a writ the fact that such a party having the right to obtain a writ does not prevent such party from maintaining an action for a declaratory decree. If as the learned District Judge admits that an action for a declaratory decree as well as a writ was available to the plaintiff-appellant then he should have 50 60

proceeded to decide whether the plaintiff-appellant is entitled to a declaratory decree and not consider the question of writ, for in any event, the learned District Judge had no writ jurisdiction.

I must also say that I am unaware of the existence of any provision of law which would enable the learned District Judge to reject an action in view of a better cause of action one would take in order to obtain the relief one is seeking and it is the duty cast by law on the learned District Judge to decide whether he could grant such relief sought. There is no provision of law which requires him to decide what is the best course of action the plaintiff-appellant should take and advise him on such matters. In fact the objections were raised by the 1st defendant-respondent on the question of jurisdiction and not on what was the best course of action for the plaintiff-appellant.

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While conceding that the plaintiff-appellant would not be entitled to some of the reliefs prayed for in her prayer to the plaint the first relief that she has prayed for is in respect of a declaratory decree. Therefore it was incumbent on the learned District Judge to decide whether he had judicial authority to entertain and grant this relief which the District Judge had failed to do. In the circumstances it appears to me that there is a failure of justice.

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In view of the above reasoning, I am of the view that the order of the learned District Judge cannot stand. Accordingly I set aside the order of the learned District Judge and send the case back to the District Court for a re-trial. The appeal is allowed with costs. The Registrar is directed to send the case record back to the District Court, Anuradhapura forthwith.

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DISSANAYAKE, J. - I agree.

Appeal allowed; retrial ordered.