

COLGAN AND OHTERS  
V.  
UDESHI AND OTHERS

SUPREME COURT.

G. P. S. DE SILVA, C.J.,

RAMANATHAN, J. AND

WIJETUNGE, J.

S. C. APPEAL NO. 82/95

C. A. APPLICATION NO. 233/95 (REVISION)

D. C. COLOMBO 4146/SPL

13TH SEPTEMBER, 1996.

*Civil Procedure Code - Misjoinder of plaintiffs and causes of action - Sections 17 and 36(1).*

Five Plaintiffs sued three Defendants, inter alia, for a permanent injunction preventing them from running a school on the land and premises in suit and pleaded the several deeds by which they acquired title to a "divided and defined allotment out of the land described in schedule A" to the plaint, and shown in plan 1879A. There was no division of land on the ground. The plaint averred that the Plaintiffs jointly possessed the land until they were dispossessed. There was one house, and it was in that house that the school was established.

**Held:**

It could not be said that the plaint discloses only one cause of action, for one wrongful act which causes injury to more than one person may give rise to separate causes of action. However, on the facts all five Plaintiffs were "jointly interested" in each cause of action and the joinder was permissible under Section 36(1) of the Civil Procedure Code.

**Per G. P. S. de Silva, C.J.**

"... it is well to remember that a court should not be fettered by technical objections on matters of procedure"

**Cases referred to:**

1. *Weragama v. Bandara* - 77 NLR 289.
2. *Podihamy v. Simon Appu* 47 NLR 503, 504.

**AN APPEAL** from a judgment of the Court of Appeal.

*R. K. W. Goonesekera* with *M.Y.M. Faisz* for 1st and 2nd Defendants - Appellants.

*Romesh de Silva, P.C.*, with *Palitha Kumarasinghe* for Plaintiffs-Respondents.

*Cur. adv. vult.*

29th September, 1996.

**G. P. S. DE SILVA, C.J.**

The short point which arises for decision on this appeal is whether the plaint is "defective" by reason of the misjoinder of Plaintiffs and causes of action. This objection was taken by the Defendants before the District Court and it was overruled. The Defendant's application to the Court of Appeal by way of revision was also unsuccessful. Hence the present appeal by the Defendants to this court.

In this action the five Plaintiffs sued one Mrs. Colgan (1st Defendant), Crescent Schools International (Pvt) Ltd., (2nd Defendant), and the Urban Development Authority (3rd Defendant), seeking an enjoining order, interim injunction and a permanent injunction preventing the 1st and 2nd Defendants, their directors, servants and agents from running a school and/or educational institution under the name of Crescent International School in the premises described in schedule A to the plaint. The Plaintiffs pleaded the several deeds by which they acquired title to the land and premises in suit. Mr. R. K. W. Goonesekera for the Defendants-Appellants laid much emphasis on the Plaintiff's assertion in the plaint that they acquired title to a "divided and define allotment out of the land described in schedule A and shown in plan 1879A. Mr. Goonesekera argued that there was more than one cause of action pleaded in the plaint inasmuch as the true complaint of the plaintiffs was the violation of their distinct and separate rights to the property. On this basis, Mr. Goonesekera contended that there is a misjoinder of plaintiffs and causes of action and relied on section 17 of the Civil Procedure Code. The relevant part of section 17 enacts that "Nothing in this Ordinance shall be deemed to enable plaintiffs to join in respect of distinct causes of action."

On the other hand, Mr. Romesh de Silva for the Plaintiffs-Respondents submitted that it was the case for the Plaintiffs (as set out in the plaint) that they were jointly in possession of the land and premises in suit, that on or about the 14th of December 1993 that the 1st Defendant with a crowd "of about 30 thugs some of whom were armed forcibly and unlawfully entered the land" and dispossessed them. Counsel referred to the definition of the term "cause of action" in section 5 of the Civil Procedure Code and urged that the Plaintiffs complain of only one "wrong" and that is (to use Counsel's own words) "the carrying on of the school in the premises in suit." It was also pointed out to us that there was no division or separation of the land on the ground. Mr. de Silva stressed the following facts as pleaded, namely, (i) joint possession of the land by the Plaintiffs until they were dispossessed on 14.12.93; (ii) that there was one land, one house, and it was in that house that the school functions. And so counsel contended that there was but one cause of action and relied on section 11 of the Civil Procedure Code.

Mr. Goonesekera cited the judgment of Samerawickrema, J. in *Weragama v. Bandara*.<sup>(1)</sup> This case is of much assistance in deciding the appeal before us. Samerawickrema, J., while holding that "where A has a cause of action against two Defendants and B has a separate cause of action against the same two Defendants they cannot, under our law, unite them in one action on the grounds that both causes of action arise from the same acts or series of acts. . ." goes on to state that section 17 of the Civil Procedure Code must be read with "the second part of the first paragraph of section 36(1) of the Civil Procedure Code" (at page 292). The relevant part of section 36(1) reads thus: "and any Plaintiffs having causes of action in which they are jointly interested against the same Defendant or Defendants may unite such causes of action in the same action." Samerawickrema J., holds that the expression "interested" in section 36(1) "does not mean having an interest from affection, curiosity, novelty or the like but having an interest in the sense of having a pecuniary or other claim or legal right or liabilities that may be affected".

The averments in the plaint show that the plaintiffs were jointly in possession of the property and on one particular date they were "dispossessed". I am not inclined to agree with Mr. de Silva that the

plaint discloses only one cause of action, for one wrongful act which causes injury to more than one person may give rise to separate causes of action. However, on the facts alleged in the plaint I hold that all five plaintiffs were "jointly interested" in each cause of action and the joinder was permissible in terms of the second part of the first paragraph of section 36(1) of the Civil Procedure Code.

Before I conclude I wish to add, that it is well to remember that "a court should not be fettered by technical objections based on matters of procedure". per Dias, J., in *Podihamy v Simon Appu*,<sup>(2)</sup>

For these reasons, the appeal fails and is dismissed, but in all the circumstances, without costs.

**RAMANATHAN, J.** – I agree.

**WIJETUNGA, J.** – I agree.

*Appeal dismissed.*