

RANASINGHE
v.
NANDANIE ABEYDEERA

COURT OF APPEAL.
WEERASEKERA, J. (P/CA)
JAYASINGHE, J.
C.A. 756/94(F)
D.C. COLOMBO 10570/M
NOVEMBER 12, 1997.

Civil Procedure Code – Unincorporated Society – Non compliance with section 16 – is it a fatal irregularity.

Held:

- (1) It is an established principle of law that the failure to comply with section 16 is a fatal irregularity.
- (2) It is imperative for the plaintiff respondent to have issued notice as contemplated under section 16, if it were not so all members of the unincorporated body would have to be brought before Court. Section 16 has been promulgated with this in view so that out of a large body of persons who form an unincorporated society a particular number of persons would be nominated to represent the entire body.

APPEAL from the judgment of the District Court of Colombo.

Case referred to:

1. *Suppiah Pulle v. Ramanathan* – 39 NLR 90.

Manogara R. de Silva for defendant-appellant.

K. S. Ratnaveil with Kumari Gamachchige for plaintiff-respondent.

Cur. adv. vult.

November 12, 1997.

WEERASEKERA, J. (P/CA)

The plaintiff instituted this action by his plaint dated 11.02.91 and in the plaint in paragraph (2) asserted that the defendants, the Sri Lanka Red Cross Society, was an unincorporated body and moved in the prayer for notices in terms of section 16 of the Civil Procedure Code. The plaintiff claimed damages by reasons of the death of the plaintiff's husband that occurred in the course of an accident. The plaintiff alleged that the 1st defendant was the driver of the vehicle in which the deceased was transported and which met with an accident whilst doing so. The 2nd, 3rd, 4th and 5th defendants were the office bearers of the Sri Lanka Red Cross Society and sued *in persona*.

The defendants in their answer took up the position that they were an incorporated society by reason of being set up under a Royal Charter. They also took up the position even conceding but not admitting that it is an unincorporated body that there has been no compliance with section 16 of the Civil Procedure Code. They also alleged in their argument before us today that inasmuch as negligence has been proved damages decreed is excessive.

The learned District Judge by his judgment dated 12.09.94 gave judgment in a sum of Rs. 400,00/- in favour of the plaintiff. This appeal is from that order.

Mr. de Silva on behalf of the appellant has taken up the position that inasmuch as it has been pleaded in paragraph (2) of the plaint that "the plaintiff being an unincorporated body section 16 of the Civil Procedure Code and the provisions not being complied with the plaintiff would not be entitled to maintain this action in its present form."

We find that on the authority of *Suppiah Pulle v. Ramanathan*⁽¹⁾ it is an established principle of law that the failure to comply with section 16 was a fatal irregularity".

Learned Counsel for the respondent argued that section 16 does not make it imperative for the plaintiff to have issued notice as contemplated. We are unable to accept this position inasmuch as if it were not so all the members of the unincorporated body would have to be brought before Court. Section 16 has been promulgated with this in view, so that out of a large body of persons who form an unincorporated society a particular number of persons could be nominated to represent the entire body. The prudence underlying section 16 is clearly demonstrated by its practical application. In those circumstances we are of the view that section 16 and the failure to comply with section 16 creates an irregularity which is fatal. In this case in the plaint and the prayer the plaintiffs have sought to comply with section 16 though they had not proceeded with it.

We are of the view that the parties seeking to sue an unincorporated body should get permission of Court in terms of section 16. In this case an application has been made by the respondent's Counsel that the case be heard *de novo* after application has been made afresh in terms of section 16 of the Civil Procedure Code.

We find that in the interest of justice this procedure would be most appropriate inasmuch as the plaint and the prayer does contain sufficient material for seeking relief under section 16 of the Civil Procedure Code and that the interest of justice would be served by the correct procedure being followed.

The prescriptive rights of parties are not affected, if an order to hear the case *de novo* is made. In those circumstance we make order that in the interest of justice the case be heard *de novo* and that the plaintiff would be entitled to seek the relief he seeks with the permission of Court as prayed for in paragraph (a) to the prayer of the plaint and after due compliance with section 16 of the Civil Procedure Code proceed to trial.

Forward record to the District Court of Colombo for hearing *de novo*. Judgment dated 12.09.94 is set aside.

JAYASINGHE, J. – I agree.

Appeal allowed.