

JAYAMAHA
v.
SHABRA UNICO FINANCE LTD

COURT OF APPEAL
WIGNESWARAN, J.
TILAKAWARDENA, J.
C.A. 241/93(F)
D.C. MT. LAVANIA 23/91/S
JUNE 18, 1999
AUGUST 27, 1999

Jurisdiction of the District Court to hear case - Relevant time of residence, and jurisdiction - ascertained as at the time of filing action - territorial jurisdiction - relevant gazette notification to be examined. Civil Procedure code S. 696, S. 697, cap S1

Held :

- (i) The relevant time of residence and jurisdiction were to be ascertained as at the time of filing action. The fact that the Respondent - Respondent had changed its office subsequent to the filing of the action, to another premises, should not have been taken into consideration.
- (ii) Prior to the enactment of A. J. L. 44 of 1973, Colombo 4, 5, 6 as well as Colombo 3 were within the territorial limits of the District Court of Colombo.
- (iii) Thereafter Grama Seva Niladharis Divisions of Wellawatte and the Police Station area of Bambalapitiya in the G. S. Niladharis division of Kollupitiya in the administrative District of Colombo fell within the territorial limits of the District Court of Mt. Lavanía (Gazette extraordinary 43/3 02. 07. 1979).
- (iv) The relevant gazette notification should have been examined and proper evidence led in court to come to the conclusion as to whether the premises fell within the territorial limits of the District Court of Mt. Lavanía or not.
- (v) With no such finding, the Court should not have proceeded to give its order on the basis that the Defendant was resident elsewhere (i. e. at an address other than that mentioned in the caption to the Plaint).

APPEAL from the Judgment of the District Court of Mt. Lavanía.

Cases referred to :

1. *W. Robinson Fernando v. S. Henrietta Fernando* - 74 NLR 57 at 58.

Ranjan Suwadaratne for Petitioner Appellant.

Lasantha Mudalige for Respondent Respondent.

Cur. adv. vult.

January 19th, 2000.

WIGNESWARAN, J.

By order dated 07. 07. 1993 the District Judge of Mt. Lavinia dismissed the Petitioner - Appellant's case due to lack of jurisdiction on the part of his Court to hear and determine same. It was the learned District Judge's position that prima facie the District Court of Mt. Lavinia had no jurisdiction to hear and determine this action. In this connection he referred to the decision delivered in Court of Appeal Case No. L 64/79. (D. C. Chilaw Case No. 1055/L) and to the provisions of Sections 696 and 697 of the Civil Procedure Code.

It is relevant to note that the learned District Judge, Mt. Lavinia had taken it for granted that the Defendant was resident at New Bullers Road, Colombo 3. (Vide Page 109 of the Brief)

According to the Petition dated 01. 11. 1991 filed under the provisions of Chapter 51 of the Civil Procedure Code the Respondent - Respondent was a limited liability Company having its registered office at No. 2, R. A. de Mel Mawatha, Colombo 3. The relevant time of residence and jurisdiction were to be ascertained as at the time of filing action. The fact that the Respondent - Respondent had changed its office to premises No. 61, New Bullers Road, Colombo 3 subsequent to the filing of this action should not have been taken into consideration. Jurisdiction of a Court to hear a case depended on its territorial jurisdiction as at the time of filing action.

But if the defendant on the other hand was resident elsewhere under the jurisdiction of one Court while the plaintiff gave another address within the territorial jurisdiction of another Court such a matter should be brought to the notice of such Court by adequate evidence or documentary proof.

In the instant case it must be remembered that prior to the enactment of the Administration of Justice Law No. 44 of 1973

Colombo 4, 5, 6 as well as Colombo 3 fell within the territorial limits of the District Court of Colombo. Thereafter the Grama Seva Niladhari's Division of Wellawatte and the Police Station area of Bambalapitiya in the Grama Seva Niladhari's Division of Kollupitiya in the Administrative District of Colombo fell within the territorial limits of the District Court of Mt. Lavinia as per Gazette Extraordinary No. 43/3 dated 02. 07. 1979.

It must also be noted that R. A. de Mel Mawatha had been extended from Colombo 3 to Colombo 4 and therefore part of R. A. de Mel Mawatha fell within the territorial limits of the District Court of Mt. Lavinia while part fell within the limits of the District Court of Colombo. It is in this background that the territorial jurisdiction pertaining to this case should have been gone into.

No evidence seems to have been called by Court to find out whether at the time of filing action the Defendant's place of business was at No. 2, R. A. de Mel Mawatha, Colombo or not. If it was so, the relevant Gazette Notification should have been examined and proper evidence led in Court to come to the conclusion as to whether premises No. 2, R. A. de Mel Mawatha fell within the territorial limits of the District Court of Mt. Lavinia or not. There was nothing "obvious" about the Defendant's residence being situated outside the limits of the District Court of Mt. Lavinia. Clearly if the address was at premises No.2, R. A. de Mel Mawatha, then there was doubt as to whether these premises situated at the boundary between the two jurisdictions fell within the limits of the District Court of Mt. Lavinia or Colombo. Premises No. 61, New Bullers Road, Colombo 03 did not come into the equation at all.

Courts must not be in a hurry to dismiss a case on pure technical grounds. Parties come into Court for relief to their problems. If on technical grounds a case has to be dismissed, Court must be very definite of their grounds. They must check on the veracity of the arguments placed before them in this regard.

There is no reason given by the learned District Judge as to why he chose to give his judgment on the basis that the Defendant

was resident at premises No. 61, New Bullers Road, Colombo 3 and not at premises No. 2, R. A. de Mel Mawatha. If the Plaintiff had wilfully given an old address just to bring the case within the local limits of the District Court of Mt. Lavinia then there should have been a finding on that. With no such finding, the Court should not have proceeded to give its order on the basis that the Defendant was resident elsewhere (that is, at an address other than that mentioned in the caption to the plaint). If in fact on the date of filing action the Defendant had its office at premises No. 2, R. A. de Mel Mawatha there was a probability that such premises were situated within the territorial limits of the District Court of Mt. Lavinia. In this connection, it is useful to remember the dictum of Justice Samarawickrama in *W. Robison Fernando v. S. Henrletta Fernando*⁽¹⁾ at 58 with regard to burden of proof, where it was stated as follows:-

"The position however appears to be different where the want of jurisdiction is not apparent on the face of the record but depends upon the proof of facts. In such a case, it is for a party who asserts that the Court had no jurisdiction to raise the matter and prove the necessary facts. A Court had to proceed upon the facts placed before it and its jurisdiction must therefore depend upon them and not upon the facts that may actually exist."

We therefore set aside the order of the learned District Judge and send back the case for inquiry into the question of the actual address of the Defendant at the time of filing action and as to whether such address fell within the territorial limits of the District Court of Mt. Lavinia or Colombo. It is incumbent on the part of the Original Court to have reference to the relevant Gazette Notification in this regard and if necessary obtain evidence thereon regarding its contents when coming to its conclusion.

Parties shall bear their own costs of this appeal.

TILAKAWARDANE, J. - I agree.

Appeal allowed.