AMEER
V.
KULATUNGE

SUPREME COURT.
G. P. S. DE SILVA, C.J.
RAMANATHAN, J.
WIJETUNGE, J.
S.C. 93/95.
C.A. REV 3/95.
DC COLOMBO 7919/RE.
AUGUST 20, 1996.

Rent and Ejectment - Rent Act 7 of 1972 - Civil Procedure Code S 36. Misjoinder of causes of action - Termination of Tenancy - Notice to quit - Sinhala copy of plaint different from English copy.

The Plaintiff Appellant instituted action to eject the Defendant - Respondent from four premises bearing Assest. Nos. 65, 63 1/1, 63 1/2 and 71. The District Court decided to try the issues on misjoinder of causes of action as preliminary Issues. The District Court answered these issues in favour of the Plaintiff and made order setting down the case for Trial on the remaining issues.

The Defendant moved in Revision and submitted that there has been no termination of the Tenancy in respect of premises No. 71, as para 9 of the Sinhala copy of the plaint it is averred that on or about 9.7.92, the Plaintiff by his Attorney-at-Law gave the Defendant notice to quit the premises 65, 63 1/1, 63 1/2 and there was no reference to premises No. 71 in para 9 of the Sinhala copy.

Although this matter was not raised before the District Court, the learned District Judge in his order noted the fact that in the English copy of the Plaint para 9 refers to premises No. 71 as well.

The Court of Appeal took the view that there is no provision in law for the District Judge to refer to the English copy of the Plaint to supplement the ommision in the plaint in Sinhala, and the Plaintiff cannot eject the Defendant from Premises No. 71 as prayed for without terminating the Tenancy in respect of the premises; that there is a misjoinder of causes of action. The Court of Appeal dismissed the Plaintiffs action, on appeal.

Held:

(1) On reading of the entirety of the plaint in Sinhala it is clear that the

omission in para 9 to refer to premises No. 71 is only a typographical error.

(2) The Court of Appeal had overlooked the fact that the Notice to quit refers not only to premises No. 65, 63 1/1, 63 1/2 but also to No. 71.

(3) Reference to the English copy of the Plaint (by the District Judge) would merely confirm, if confirmation was necessary, the conclusion arrived at by a scrutiny of all the averments in the Sinhala plaint.

(4) Section 36 of the Civil Procedure Code permits the Plaintiff to unite several causes of Action against the same Defendant.

(5) Court cannot dismiss an action merely on the ground of misjoinder of Causes of Action.

APPEAL from the judgment of the Court of Appeal.

Cases referred to:

1. *Morais v. Victoria* - 73 NLR 409 at 413.

2. *Dingiri Appuhamy v. Pagnananda Thero* 67 NLR 89 at 90.

A. K. Premadasa, P.C. with *G. H. A. Suraweera* and *C.E. de Silva* for the Plaintiff-Appellant.

Rohan Sahabandu for Defendant-Respondent.

Cur. adv. vult.

September 06, 1996.

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

The Plaintiff instituted these proceedings seeking, *inter alia*, the ejectment of the Defendant from four premises bearing assessment Nos. 65, 63 1/1, 63 1/2 and 71, Jayantha Weerasekera Mawatha, Colombo 10. In his plaint the Plaintiff averred that the premises in suit are "excepted" premises and accordingly the provisions of the Rent Act have no application. The Defendant in his answer pleaded *inter alia*, that the premises are governed by the provisions of the Rent Act.

The District Court decided to try issue Nos. 10, 11 and 12 as preliminary issues of law. These issues read as follows:

Issue No. 10 - Is there a misjoinder of causes of action as pleaded in the plaint?

Issue No. 11 - If the above issue is answered in the affirmative, can the Plaintiff have and maintain this action?

Issue No. 12 - Does the plaint conform to the imperative provisions of the Civil Procedure Code?

The District Court having considered the submissions made by Counsel for both parties delivered its order answering all three issues in favour of the Plaintiff and made order setting down the case for trial on the remaining issues. The Defendant thereupon moved the Court of Appeal by way of an application in revision to have the order of the District Court set aside. The Court of Appeal set aside the order of the District Court and answered the preliminary issues in favour of the Defendant. Hence the present appeal preferred to this court by the Plaintiff.

At the hearing before the Court of Appeal, Counsel for the Defendant Petitioner submitted that there has been no termination of the tenancy in respect of the premises bearing assessment No. 71. Counsel relied on paragraph 9 of the Sinhala copy of the plaint, wherein it is averred that on or about 9th July 1992, the Plaintiff by his Attorney-at-Law gave the Defendant notice to quit the premises Nos. 65, 63 1/1, 63 1/2 Jayantha Weerasekea Mawatha, Colombo 10, on or before 31st August 1992.

The contention was that in paragraph 9 of the plaint in Sinhala there was no reference whatsoever to premises bearing assessment No. 71. The omission to refer to premises No. 71 in paragraph 9 of the Sinhala copy of the plaint filed of record was discovered by the District Judge on his own; it was not a matter which was raised before the District Court by Counsel for the Defendant. The District Judge, however, in his order noted the fact that in the English copy of the plaint filed of record paragraph 9 refers to premises bearing assessment No. 71 as well. The Court of Appeal took the view that there was no provision in law for the District Judge to refer to the English copy of the plaint to supplement the omission in the plaint in Sinhala.

Mr. Premadasa for the Plaintiff Appellant submitted that on a reading of the entirety of the plaint in Sinhala it is clear that the omission in paragraph 9 to refer to premises bearing assessment No. 71 is only a typographical error. With this submission I agree. Paragraph 2 of the plaint avers that the Plaintiff let to the Defendant and the Defendant took on rent from the Plaintiff on terms of a monthly tenancy premises Nos. 65, 63 1/1, 63 1/2 and 71 Jayantha Weerasekera Mawatha, Colombo 10. In paragraph 3 of the plaint it is averred, Inter alia, that premises bearing assessment No. 71 is more fully described in the 3rd schedule to the plaint. In paragraph 7 it is averred that premises No. 71 are excepted premises, in terms of regulation 3 of the schedule to the Rent Act. Paragraph 10 of the plaint further avers that a cause of action has accrued to the Plaintiff to sue the Defendant for ejectment from premises bearing assessment No. 71. In paragraph (c) of the prayer to the plaint the Plaintiff prays for ejectment of the Defendant from premises No. 71. It is thus manifest on a careful reading of the plaint in Sinhala as a whole that the omission to refer to premises No. 71 in paragraph 9 is no more than a typographical error.

More importantly, the Court of Appeal has overlooked the fact that with the statement of objections filed on behalf of the Plaintiff the copy of the notice to quit served on the Defendant was produced marked "A". At the hearing before us, Mr. Rohan Sahabandu for the Defendant Respondent very properly did not challenge the receipt of the notice to quit. (At the trial, the notice to quit was not marked as the leading of evidence had not commenced). Now, the notice to quit refers not only to premises Nos. 65, 63 1/1, 63 1/2 but also to premises bearing assessment No. 71, Jayantha Weerasekera Mawatha, Colombo 10. If the Cout of Appeal had considered the terms of the notice to quit then it would have been clear beyond doubt firstly, that the tenancy in respect of premises No. 71, has been terminated and secondly, that the omission to refer to premises No. 71 in paragraph 9 was merely a typographical error and nothing turns upon that omission. Reference to the English copy of the plaint would merely confirm, if confirmation was necessary, the conclusion arrived at by a scrutiny of all the averments in the plaint in Sinhala. In this view of the matter, the Court of Appeal was in error in holding that, ". . . when the Respondent sought to eject the petitioner from premises No. 71

as prayed for in paragraph 11 (c) of the plaint without first terminating the tenancy in respect of the premises, there has been a misjoinder of causes of action."

What I have stated above is sufficient to dispose of the appeal, but I would like to make the observation that section 36 of the Civil Procedure Code permits the Plaintiff to unite several causes of action against the same Defendant. (In this case there was only one Defendant) "There is . . . no objection to the Plaintiff uniting in one action several different causes of action against the same Defendant in accordance with section 36 of our code . . ." *per A. L. S. Sirimanne J., in Morais v. Victoria.*[1] In any event, a Court cannot dismiss an action merely on the ground of misjoinder of causes of action. *Dingiri Appuhamy v. Pagnananda Thero.*[2]

For these reasons, the appeal is allowed, the judgment of the Court of Appeal is set aside and the order of the District Court dated 25.11.94 is restored. The Defendant-Respondent must pay the Plaintiff-Appellant a sum Rs. 1000/- as costs of appeal.

RAMANATHAN, J. – I agree.

WIJETUNGA, J. – I agree.

Appeal allowed.