

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

S.N Seneviratne

No.596/66, Bandaranayake Mawatha,

Anuradhapura.

**Plaintiff**

**Case No: 482/98(F)**

**Vs.**

**D.C Anuradhapura Case No: 15007/MR**

Provincial Director of Education

Provincial Education Office,

Anuradhapura.

**Defendant**

**AND NOW BETWEEN**

S.N Seneviratne (Deceased)

No.596/66, Bandaranayake Mawatha,

Anuradhapura.

**Plaintiff- Appellant**

Ran Banda Seneviratne

No.596/66, Bandaranayake Mawatha,

Anuradhapura.

**Substituted Plaintiff-Appellant**

**Vs.**

Ekanayake Mudiyanseelage Nirmala

Wasantha Ekanayake,

Provincial Director of Education

Provincial Education Office,

Anuradhapura.

**Defendant-Respondent**

**Before:** Janak De Silva J.

**Counsel:**

U.L.M. Uswatta for Substituted Plaintiff-Appellant

Manohara Jayasinghe SSC for the Defendant-Respondent

**Written Submissions tendered on:**

Substituted Plaintiff-Appellant on 07.08.2013, 13.11.2018 and 05.04.2019

**Argued on:** 28.02.2019

**Decided on:** 28.06.2019

**Janak De Silva J.**

This is an appeal against the judgment of the learned District Judge of Anuradhapura dated 25.05.1998.

The Plaintiff instituted the above styled action against the Defendant alleging that there was a breach of the contract entered between the parties marked P1 and P2. The contract was for the construction of a school building of 80 x 20 feet with an estimated value of Rs. 3,10,671/=. The Plaintiff contends that he completed work amounting to Rs. 1,97,235.65 but was paid only Rs. 45,000/=. He further claims that the contract was terminated without proper notification and

that at the time of the wrongful termination goods to the value of Rs. 41,000/= was at the site which was later used for the construction of the building. Accordingly, the Plaintiff claimed damages in a sum of Rs. 152,235.65 with 18% interest and a further sum of Rs. 41,000/=.

The Defendant denied that there was a wrongful termination of the agreement. He claimed that the Plaintiff failed to complete the construction although he was given an extension of time and as such the agreement was lawfully terminated in terms of clause 55 of the agreement.

The learned District judge dismissed the action and hence this appeal.

Before considering the grounds of appeal, it must be noted that the appeal brief did not contain any of the marked documents of either party although at the trial the Plaintiff marked documents P1 to P2 and the Defendant marked documents V1 to V10. The journal entries do not indicate whether the Plaintiff tendered his marked documents at the end of the trial whereas journal entry of 15.12.1997 [Appeal Brief page 31] indicates that the Defendant tendered documents V1 to V10 at the end of the trial.

Court directed the Registrar of this Court to write to the Registrar of the District Court of Anuradhapura and ascertain whether any of the marked documents were available but the response was in the negative. The parties were directed to check whether any of the marked documents were available with them. That also proved futile. Accordingly, Court is compelled to consider this appeal without having the benefit of any of the marked documents.

One of the primary grounds of appeal is that the agreement P1 was not duly terminated. However, the evidence shows that letter dated 29.07.1992 (V9) was sent in terms of clause 55 of the agreement terminating the agreement. This letter was not marked subject to proof and was in fact led in evidence at the end of the case of the Defendant. Therefore, it is evidence of termination as well as the fact that it was received by the Plaintiff.

The Plaintiff further contended that documents marked V6, V7 and V9 are not admissible in evidence but all three documents were marked in evidence without objection and was in fact led in evidence at the end of the case for the Defendant without any objection. Thus, all three documents are part of the evidence admitted in the case.

In *Sri Lanka Ports Authority and Another v. Jugolinija* [(1981) 1 Sri.L.R. 18 at 24] Samarakoon C.J. held:

“If no objection is taken when at the close of a case documents are read in evidence, they are evidence for all purposes of the law. This is the *cursus curiae* of the original Civil Courts.”

This was quoted with approval and followed by the Supreme Court in *Balapitiya Gunananda Thero v. Talalle Methananda Thero* [(1997) 2 Sri.L.R. 101] where it was held that where a document is admitted subject to proof but when tendered and read in evidence at the close of the case is accepted without objection, it becomes evidence in the case and that this is *cursus curiae*. There is a long line of cases where this principle has been recognized [*Silva v. Kindersley* (18 N.L.R. 85), *Adaicappa Chetty v. Thos Cook and Son* (31 N.L.R. 385), *Seyed Mohamed v. Perera* (58 N.L.R. 246), *Cinemas Limited v. Sounderarajan* (1998) 2 Sri.L.R. 16, *Stassen Exports Ltd v. Brooke Bond Group Ltd and two others* (2010) BLR 249].

The Plaintiff also contended that there is evidence that while the contract between the parties was existing the Defendant entered into a contract with another party for the same transaction. The Plaintiff is seeking to establish that the Defendant repudiated the contract between the parties. However, no issue has been raised on this matter. It is trite law that the trial proceeds on the issues raised [*Dharmasiri v. Wickrematunga* (2002) 2 Sri.L.R. 218].

There is also another matter which must be addressed by Court. The Defendant in the District Court is neither a natural or legal person although an amendment of the caption had been made in appeal.

It is trite law that only a legal or natural person can sue or be sued though earlier there was authority that an action can be maintained *nominee officii*. [*The Land Commissioner v. Ladamuttu Pillai* (62 N.L.R. 169), *M.R. Singho Mahatmaya v. The Land Commissioner* (66 N.L.R. 94), *The Superintendent Deeside Estate, Maskeliya v. Ilankai Thozhilar Kazhakam* (70 N.L.R. 279), *Sri Lanka Transport Board v. Colombo Metropolitan Bus Company and others* (2008) 1 Sri.L.R. 1]. It is a fundamental principle that a Court should not make an order which it cannot enforce [*The Superintendent Deeside Estate, Maskeliya v. Ilankai Thozhilar Kazhakam* (70 N.L.R. 279)]. That would be the case if a court enters judgment against a non-natural or non-legal person.

For all the foregoing reasons, the appeal is dismissed with costs.

Judge of the Court of Appeal