

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

1. Geekiyanage Sardha Maheshini
Amarasinghe,
2. Dona Kusuma Sardhalatha
Amarasinghe,
Both of
“Sisira”, Sisirawatte,
Narammala.
Plaintiffs

SC APPEAL NO: SC/APPEAL/161/2019

SC LA NO: SC/HCCA/LA/536/2017

HCCA KURUNEGALA NO: NWP/HCCA/KUR/03/2016/LA

DC KULIYAPITIYA NO: 66/L

Vs.

1. Geekiyanage Nirosha Prasadini
Kahandawarachchi (nee
Amarasinghe),
2. Chanaka Ravindra
Kahandawarachchi,
Both of
No. 2, Esther Place,
Park Road,
Colombo 05.

3. Geekiyanage Thanuja Sanjeevani
Amarasinghe,
No.14, Vijitha Road,
Nedimala,
Dehiwala.
 4. Commercial Bank,
Bristol Street,
Colombo 01.
- Defendants

AND BETWEEN

1. Geekiyanage Nirosha Prasadini
Kahandawarachchi (nee
Amarasinghe),
 2. Chanaka Ravindra
Kahandawarachchi,
Both of No. 2,
Esther Place, Park Road,
Colombo 05.
- 1st and 2nd Defendant-Appellants

Vs.

1. Geekiyanage Sardha Maheshini
Amarasinghe,
 2. Dona Kusuma Sardhalatha
Amarasinghe,
Both of "Sisira", Sisirawatte,
Narammala.
- Plaintiff-Respondents

3. Geekiyanage Thanuja Sanjeevani
Amarasinghe,
No.14, Vijitha Road, Nedimala,
Dehiwala.

4. Commercial Bank,
Bristol Street,
Colombo 01.

3rd and 4th Defendant-
Respondents

AND NOW BETWEEN

1. Geekiyanage Sardha Maheshini
Amarasinghe,

2. Dona Kusuma Sardhalatha
Amarasinghe,
Both of “Sisira”, Sisirawatte,
Narammala.

Plaintiff-Respondent-Appellants

1. Geekiyanage Nirosha Prasadini
Kahandawarachchi (nee
Amarasinghe),

2. Chanaka Ravindra
Kahandawarachchi,
Both of No. 2,
Esther Place, Park Road,
Colombo 05.

1st and 2nd Defendant-Appellant-
Respondents

3. Geekiyanage Thanuja Sanjeevani
Amarasinghe,
No.14,
Vijitha Road,
Nedimala,
Dehiwala.
4. Commercial Bank,
Bristol Street,
Colombo 01.
3rd and 4th Defendant-
Respondent-Respondents

Before: P. Padman Surasena, J.

Yasantha Kodagoda, P.C., J.

Mahinda Samayawardhena, J.

Counsel: Dr. Sunil Cooray with Diana Rodrigo for the Plaintiff-
Respondent-Appellants.

Dushantha Kularathne with Roshan Pathirana for the
1st and 2nd Defendant-Appellant-Respondents.

Argued on : 03.08.2021

Written submissions:

by the Plaintiff-Respondent-Appellants on
22.11.2019.

by the 1st and 2nd Defendant-Appellant-
Respondents on 08.10.2020.

Decided on: 15.10.2021

Mahinda Samayawardhena, J.

The two plaintiffs filed this action against the four defendants seeking a declaration that the 1st and 2nd defendants are holding the property in suit conveyed by deed No. 256 in trust for the plaintiffs, and the 2nd defendant's transfer of his rights in favour of the 1st and 3rd defendants by deed No. 11848 is confined to such limited rights. They sought an order retransferring the property in their names and damages. No relief was sought against the 4th defendant bank to whom the property had been mortgaged and the 4th defendant was later discharged from the proceedings.

The 1st and 2nd defendants filed the answer seeking dismissal of the action. The 3rd defendant filed a somewhat perplexing answer in that the answer commences by denying the averments in the plaint and concludes by seeking a decree that the 1st and 2nd defendants are holding the property in trust for the plaintiffs. Notably, the 3rd defendant does not state in the answer that she is prepared to transfer whatever rights passed on to her by deed No. 11848 in the name of the plaintiffs. At the trial, the plaintiffs raised issues seeking all the reliefs prayed for in the prayer to the plaint, including the reliefs sought against the 3rd defendant.

Halfway through the trial, the 1st and 2nd defendants made an application to the District Court to make the 3rd defendant a plaintiff in the action on the basis that the 3rd defendant supports the case of the plaintiffs. This application was refused by the District Court mainly on the ground that it was a belated application. On appeal, the High Court of Civil Appeal set aside this order and directed the District Court to add the 3rd

defendant as the 3rd plaintiff. It is against this Judgment of the High Court of Civil Appeal that the plaintiffs have preferred this appeal.

This Court granted leave to appeal against the Judgment of the High Court of Civil Appeal on the questions whether the impugned Judgment is contrary to *inter alia* sections 14 and 18 of the Civil Procedure Code, and whether the High Court failed to consider the reason the 3rd defendant was not made a plaintiff and the fact that the 3rd defendant has no cause of action against the 1st and 2nd defendants.

The High Court of Civil Appeal allowed the application of the 1st and 2nd defendants under section 18(1) of the Civil Procedure Code, which reads as follows:

The court may on or before the hearing, upon the application of either party, and on such terms as the court thinks just, order that the name of any party, whether as plaintiff or as defendant improperly joined, be struck out; and the court may at any time, either upon or without such application, and on such terms as the court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in that action, be added.

The High Court of Civil Appeal highlights that in terms of section 18(1), “*the court may at any time, either upon or without such*

application, and on such terms as the court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff”.

After the amendments to the Civil Procedure Code by Act No. 9 of 1991 and Act No. 8 of 2017, section 18 of the Civil Procedure Code cannot be read in isolation but in conjunction with section 93(2). (*Colombo Shipping Co Ltd v. Chirayu Clothing Pvt Ltd* [1995] 2 Sri LR 97)

Section 93(2) of the Civil Procedure Code reads as follows:

On or after the day first fixed for the Pre-Trial of the action and before final judgment, no application for the amendment of any pleadings shall be allowed unless the Court is satisfied, for reasons to be recorded by the Court, that grave and irremediable injustice will be caused if such amendment is not permitted, and on no other ground, and that the party so applying has not been guilty of laches.

The basic rule embodied in section 93(2) is that no amendment of pleadings shall be allowed on or after the day first fixed for the pre-trial of the action. As this section stands today, the Court no longer has the discretion to allow the amendment of pleadings after the day first fixed for the pre-trial of the action. The Court can now allow the amendment of pleadings after the day first fixed for the pre-trial of the action if and only if the Court is satisfied that (a) grave and irremediable injustice would be caused if such amendment is not permitted and (b) the party seeking such amendment is not guilty of laches. Both these requirements must be satisfied, not one. (*Kuruppuarachchi v. Andreas* [1996] 2 Sri LR 11)

The plaintiffs filed the action on 06.11.2009 and the 3rd defendant filed the answer on 26.04.2010. The 1st and 2nd defendants knew the 3rd defendant's standpoint by 26.04.2010. The case was first fixed for trial on 16.12.2010.

This was after the amendment to section 93(2) by Act No. 9 of 1991 but before the amendment by Act No. 8 of 2017. At the time of Act No. 9 of 1991, there was no pre-trial, only trial. The only change made to section 93(2) by Act No. 8 of 2017 was the substitution of the words "day first fixed for the trial" with the words "day first fixed for the Pre-Trial".

The application to add the 3rd defendant as the 3rd plaintiff under section 18 of the Civil Procedure Code was made by the 1st and 2nd defendants on 06.11.2015 in the middle of the trial after voluminous evidence had been recorded on several dates of hearing. There is no explanation for the delay in making the application. The 2nd defendant is clearly guilty of laches. Nor has the Court been convinced that grave and irremediable injustice would be caused if such amendment is not permitted.

Allowing the application of the 1st and 2nd defendants under section 18 of the Civil Procedure Code necessarily entails the amendment of pleadings. It is not just a matter of amending the caption. The amendment of pleadings was not legally permissible at the stage the application was made and therefore the application to add the 3rd defendant as the 3rd plaintiff ought to have been refused.

The High Court of Civil Appeal took the view that no cause of action is disclosed in the plaint against the 3rd defendant and there is no explanation in the plaint as to why the 3rd defendant

was made a defendant. The plaintiffs have clearly explained in the plaint the basis upon which the 3rd defendant was brought in (i.e. the execution of deed No. 11848 by the 2nd defendant in favour of the 3rd defendant) and the relief sought against her. This does not appear to be a collusive action as suggested by the High Court of Civil Appeal.

Can the 3rd defendant be made the 3rd plaintiff on the facts and circumstances of this case? Section 11 of the Civil Procedure Code enacts "*All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action.*" According to section 5 of the Civil Procedure Code, a cause of action is the wrong for the prevention or redress of which an action may be brought. The 1st and 2nd defendants have committed no wrong to the 3rd defendant. Hence no cause of action has accrued to the 3rd defendant against the 1st and 2nd defendants. The 3rd defendant, in my view, cannot be made a plaintiff.

The questions of law in respect of which leave was granted are answered in the affirmative.

I set aside the Judgment of the High Court of Civil Appeal and restore the order of the District Court dated 11.03.2016. The plaintiffs are entitled to costs in all three Courts recoverable from the 1st and 2nd defendants.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Yasantha Kodagoda, P.C., J.

I agree.

Judge of the Supreme Court