

1976

*Present : Sirimane, J., Wanasundera J., and
Colin Thome, J.*

P. M. JOHN SINGHO, Plaintiff-Appellant

and

THE ATTORNEY-GENERAL, Defendant-Respondent

S. C. 226/73—D. C. Polonnaruwa 806

*Prescription—Whether State entitled to take plea of—Acknowledgement
in writing of claim—When sufficient to defeat plea.*

Held :

- (1) That the State is entitled to take advantage of the provisions of the Prescription Ordinance.
- (2) That in the present case, the writing P19 relied on by the plaintiff to take the case, outside the period of prescription did not amount to an acknowledgement of the plaintiff's claim and could not therefore defeat the plea of prescription.

A PPEAL from a judgment of the District Court of Polonnaruwa.

Daya Pelpola for the plaintiff-appellant.

A. S. Ratnapala, State Counsel, for the Attorney-General.

Cur.adv.vult.

April 5, 1976. WANASUNDERA, J.

The plaintiff-appellant sued the Attorney-General as representing the State for the recovery of a sum of Rs. 6,767 sustained by him as damages for breach of contract.

The plaintiff who was a cultivator averred in his plaint that on or about the 5th of October, 1964 he agreed with the Director of Agriculture to have a paddy field belonging to him of an extent of 5½ acres tractor-ploughed by the use of a Disc Plough, for which he paid the Government as consideration a sum of Rs. 165. He stated that despite repeated requests the State had failed and neglected to carry out its obligations on the contract. An extent of 1½ acres of the field had however been ploughed belatedly with a different type of plough, but even this ploughing was of no use to the plaintiff as by then it was too late in the season to prepare the field for cultivation.

The defendant in his answer denied the existence of a contract between the Parties and stated that the plaintiff had made an application to the Cultivation Officer, Hingurakgoda, to obtain the use of a tractor for ploughing the said field, for which the plaintiff had deposited a sum of Rs. 165. Pursuant to this application an extent of 1½ acres was ploughed but, since the rest of the field was at that time water-logged, it was not possible to plough more of the field. The defendant further stated that the Colonisation Officer had thereafter made available to the plaintiff the use of a tractor on several occasions, but the plaintiff had not availed himself of this offer. The substantial defence taken up by the defendant was one of prescription. The plaint had been filed in 1970 in respect of a transaction that had taken place in October 1964. The State alleged that the claim was prescribed after a period of three years from the date of the cause of action. The learned District Judge, after trial, held in favour of the plaintiff on all issues, but upheld the plea of prescription and dismissed the plaintiff's action.

Counsel for the appellant sought to argue before us that the State cannot rely on prescription as a valid defence as there are no legal provisions either statutory or under the common law relating to prescription by or against the State. I am of the view that the State is entitled to take advantage of the provisions of the Prescription Ordinance even though it may not be bound by it, in the first instance. The State has, to my knowledge, taken up such pleas in appropriate cases in the past. Generally such a plea is taken up by the State only in such cases where, by reason of the lapse of time, there is the non-availability of documents and witnesses which may tend to hamper the prosecution of its case, or where there are policy considerations for doing so.

The only issue before us therefore is, whether the document P 19 constitutes an acknowledgement sufficient to take the case outside the prescriptive period. The document P 19 was a reply sent by the Director of Agriculture to the letter of demand P 18 sent to him by the lawyers of the plaintiff. P18 had set out the entire cause of action on which the action was founded. The material portion of P 19 is as follows :—

“Reference your letter dated 9.8.69, Rs. 120 as refund for 4 acres tractor ploughing could be paid to your client Mr. P. M. John Singho of Gal Amuna, Hingurakgoda.”

It seems to me, upon a reading of P19, together with the correspondence, that P19 does not amount to an acknowledgement of the plaintiff's claim. In P18 the sum of Rs. 765 claimed as damages is made up of Rs. 6,600 as damages and Rs. 165 as the deposit made by the plaintiff to the Government. In P19 there is certainly an acknowledgement that the State is willing to refund a sum of Rs. 120 out of the amount deposited by the plaintiff which, I am sure, the State is ready to pay even now. P19 does not appear to acknowledge the liability to pay a greater sum than this. It is in fact a repudiation of the cause of action averred by the plaintiff. I am therefore of the view that P19 does not constitute an acknowledgement of the plaintiff's claim to defeat the plea of prescription.

The evidence led in this case shows a lamentable lack of efficiency on the part of the officer or officers in charge of the Agricultural section at Hingurakgoda in their dealings with the members of the public. The plaintiff has undoubtedly suffered some damage due to lapses on the part of State officials and it should be prevented in the future as it may well disillusion the public and prevent them from availing themselves of the valuable services offered by the State. It is, therefore, with regret that I affirm the order of the learned District Judge and dismiss the appeal.

I would make no order for costs.

SIRIMANE, J.—I agree.

COLIN THOME, J.—I agree.

Appeal dismissed
