
**ARIYARATNE
vs
PREMADASA**

COURT OF APPEAL.
SOMAWANSA, J. P/(CA).
WIMALACHANDRA, J.
CALA 488/2004.(LG)
DC MT. LAVINIA 803/04/RE.

Judicature Act, 2 of 1978 section 3, Section 39 - Jurisdiction of District Court of Mt. Lavinia-Property outside the jurisdiction-Objection taken at the injunction inquiry?-Civil Procedure Code section 9, section 76-Sufficiency of documentary evidence submitted?

The plaintiff-respondent in addition to the substantive relief prayed for moved for an interim injunction and for an enjoining order. An enjoining order notice of interim injunction along with summons were served. The defendant-petitioner in his objections took up a preliminary objection to the maintainability of the action in the District Court of Mt. Lavinia as the property in suit was situated outside its jurisdiction. The defendant-petitioner along with his written submissions tendered a certificate from the Grama Niladhari, Pamankada West counter signed by the Divisional Secretary, Thimbirigasyaya (A1) and a copy of the gazette notification containing an order under section 3 of the Judicature Act (A8), to substantiate his position.

The District Court overruled the objection;

HELD :

- (1) The plaint has been filed on 18.08.2004 and in terms of the Government Gazette No. 1223/5/11.2.2005 limits of jurisdiction which were to be operative from 15.02.2002 clearly indicate that Pamandaka West falls within the jurisdiction of Colombo and not within the jurisdiction of Mt. Lavinia.

- (2) Lack of jurisdiction is apparent and there was no burden cast on the petitioner to lead viva voce evidence-the trial Judge is presumed to know the local limits of his/her jurisdiction.
- (3) In view of the material before Court especially the two documents - A7 and A8-there cannot be any uncertainty as to the jurisdiction of the Court.

APPLICATION for leave to appeal from an order of the District Court of Mt. Lavinia with leave being granted.

Cases referred to :

1. *W. Robinson Fernando vs Henvietta Fernando* - 74 SRI LR 58
2. *Jalaldeen vs Rajaratnam* - 1986 2 SRI LR 201
3. *David Appuhamy vs Yassi Thero* - 1987 1 SRI LR 253
4. *Blue Diamond Ltd. vs Amsterdam - Rottendam MV* - 1993 2 SRI LR 249

Samantha Vithana with Senaka de Silva for Defendent Petitioner
Ranjan Suwandaradne with Ranjith Perera for Plaintiff respondent

February 24, 2006.

ANDREW SOMAWANSA, J. (P/CA)

This is an application seeking leave to appeal from the order of the learned District Judge of Mt. Lavinia dated 15.12.2004 over-ruling the objection taken to the jurisdiction of Court and holding that the District Court of Mt. Lavinia had jurisdiction to hear and dispose the plaintiff-respondent's application and if leave is granted to set aside the aforesaid impugned order dated 15.12.2004.

Leave to appeal has been granted and when the main appeal was taken up for hearing both counsel agreed to tender written submissions. However only the plaintiff-respondent (hereinafter called the respondent) tendered written submissions and counsel for the defendant-petitioner

informed Court that he would be relying on the written submissions already tendered and will not be tendering further submissions.

The relevant facts are : the respondent in addition to the substantive relief prayed for in the prayer to the plaint moved for an interim injunction and for an enjoining order against the defendant-petitioner (hereinafter called the petitioner). The respondent's application for enjoining order was supported ex-parte and an enjoining order and notice of an interim injunction along with summons was issued on the petitioner returnable on 08.09.2004 on which date the petitioner filed his proxy and a date was given for his objections and answer namely 22.09.2004. On 22.09.2004 the petitioner filed his objections and took up a preliminary objection to the maintainability of the instant action in the District Court of Mt. Lavinia on the basis that the District Court of Mt. Lavinia had no jurisdiction to hear and conclude the instant action as the property in suit was situated outside its jurisdiction. In terms of journal entry (6) dated 22.09.2004 Court had directed parties to tender written submissions. Accordingly both parties tendered their written submissions. The petitioner in order to substantiate his objection to jurisdiction also tendered a certificate from the grama Niladhari Pamankada West counter signed by the Divisional Secretary Thimbirigasyaya dated 25.09.1993 marked A7 and a copy of the Government Gazette notification No. 1223/5 dated 11.02.2002 containing order made under Section 3 of the Judicature Act No. 2 of 1978 marked A8. Thereafter the learned District Judge made the aforesaid impugned order dated 15.12.2004 and also granted an interim injunction as prayed for in the plaint.

The impugned order of the learned District Judge is as follows :

"මෙහිදී විත්තිය කීයා සිටින්නේ 1994.12.14 වන දින හා අංක 785/21 දරන ගැසට් නිවේදනය ප්‍රකාරව මෙම ඉඩම පිහිටි බටහිර පාමංකඩ ග්‍රාම නිලධාරී කොට්ඨාසයට වැටෙන බවයි. තවද, තීරීරිගස්සාය ප්‍රාදේශීය ලේකම්ගේ අනු අත්සනින් යුතුව බටහිර පාමංකඩ ග්‍රාම නිලධාරී 2004.10.08 වන දින නිකුත් කර ඇති ලිපිය අනුව, මෙම ඉඩම පිහිටි ස්ථානය, බටහිර පාමංකඩ ග්‍රාම නිලධාරී කොට්ඨාසයට අයත් වේ.

මෙහිදී අදාළ අංක 785/21 දරන නිවේදනයේ, පාමංකඩ බැහැර කර ඇති පමණින්, එකවරම අධිකරණ බලය නොමැති බවට නිගමනය කළ නොහැක. ශ්‍රාම සේවක ලිපියද, මුද්‍රාව හා අත්සන තිබූ පමණින් එකවර සලකා බැලිය නොහැකිය. එවැනි අවස්ථාවකදී අධිකරණ බලය නොමැති බව කියා සිටින විට එම කරුණු ඔප්පු කලයුතු බව, ඩබ්ලිව්. රොබින්සන් - එදිරිව ජී හෙන්රියට්ටා නඩු තීන්දුවේ දී තීන්දු වී ඇත. ඒ අනුව මූලික වශයෙන් එය ඔප්පු කලයුතු කරුණක් වන අතර, බැඳු බැඳුමට අධිකරණ බලය ඇති බව පළමුව තීරණය කරමි."

As the parties were residing outside the local jurisdiction of the District Court of Mt. Lavinia she had correctly proceeded to determine whether the property in suit was situated within the jurisdiction of the District Court of Mt. Lavinia. However in considering this issue the two documents viz the certificate of the Grama Sevaka Niladhari marked A7 and the Gazette notification marked A8 which were crucial documents should have been taken into consideration. She has misdirected herself when she rejected the aforesaid two documents as having no evidentiary value and basing her finding on the decision in *W. Robinson Fernando vs. Henrietta Fernando*⁽¹⁾ and placing an additional burden of proof on the petitioner. I would hold that the aforesaid two documents were of evidentiary value sufficient for her to arrive at a correct finding as to whether she had jurisdiction to hear and determine the action of the respondent and in any event the petitioner by tendering the aforesaid documents has discharged his burden of proving that the District Court of Mt. Lavinia had no jurisdiction.

It is contended by counsel for the respondent that the area where the property is situated viz W. A. de Silva Mawatha, Wellawatte Colombo 6 falls within the Wellawatte Police area which is apparent by the Police complaints marked 'C' and 'D' which are annexed to the plaint. That the summons and the notice of interim injunction were served on the petitioner by the Fiscal officer of the District Court of Mt. Lavinia and that too establishes that the address concerned falls within the administrative area of the Mt. Lavinia District Court and that more

than 100 cases of the same area are presently pending before the District Court of Mt. Lavinia.

He further submits that if the petitioner is objecting to the jurisdiction after receiving the summons and notice of interim injunction in the said case he should have filed a motion and objected to the jurisdiction and moved Court to try the said jurisdictional objection before taking any steps whatsoever in the said action. Therefore the petitioner who has filed objections to the application for interim injunction cannot be permitted to raise the said jurisdictional objection by way of his objection and invite the Court to try the said jurisdictional objection along with the interim injunction inquiry.

It is important to note that in the District Court the Court had already gone into the application of the interim injunction sought by the respondent and granted the said interim injunction on 15.12.2004. Therefore he submits that in considering the provisions contained in Section 39 of the Judicature Act No. 2 of 1978, the petitioner cannot be permitted to object to the jurisdiction of the original Court at a belated stage. Section 39 of the Judicature Act No. 2 of 1978 reads as follows :

"Whenever any defendant or accused party shall have pleaded in any action, proceeding or matter brought in any Court of First instance neither party shall afterwards be entitled to object to the jurisdiction of such court, but such court shall be taken and held to have jurisdiction over such action, proceeding or matter".

He further submits that the lack of local jurisdiction is a contingent and/or latent want of jurisdiction and therefore waiver or acquiescence disentitles a party from objecting to such jurisdiction at a belated stage.

I am not at all impressed with the aforesaid submissions for neither the police complaint marked 'C' and 'D' nor the fact that an enjoining order, notice of an interim injunction and summons have been issued

by the District Court of Mt. Lavinia or that more than 100 cases of the same area is pending in the District Court of Mt. Lavinia would be relevant in any way to the objecting to the jurisdiction and moving Court to try the said issues of objection to the jurisdiction of Court before the objection or answer is filed is a novel innovation unknown to law and counsel for the petitioner has failed to cite any authority to substantiate this procedure. In the absence of such procedure as proclaimed by counsel for the petitioner, it must be accepted that the petitioner has taken up objection to the jurisdiction at the earliest possible opportunity.

In *Jaladeen vs. Rajaratnam*⁽²⁾ and in *David Appuhamy vs. Yasassi Thera*⁽²⁾ it was held that :

"An objection to jurisdiction must be taken at the earliest possible opportunity".

In the case of *Blue Diamonds Ltd., vs. Amsterdam-Rotterdam M.V.*⁽⁴⁾

What section 76 required is a specific denial of jurisdiction. No particular formula is required. A plea which *ex facie* and unambiguously involves a denial of jurisdiction would suffice.

Counsel for the respondent also contends as it were in desperation that the Court cannot act merely upon the Grama Sevaka's report and if Court wants to properly determine an objection relating to the local jurisdiction, the party who is objecting to jurisdiction should lead *viva voce* evidence such as Grama Sevaka/Registrar and Fiscal of the Court to testify with regard to the exact location of the property in suit and whether such property falls within the jurisdiction of such Court. In the present case the petitioner has not moved for an *viva voce* inquiry to establish his purported jurisdictional objection that the property in question falls outside the boundary of the District Court of Mt. Lavinia jurisdictional area. further he submits that in the Gazette Notification bearing No. 43/3 dated 2nd July, 1979, it is not expressly mentioned that the Pamankada West falls within the Colombo jurisdiction.

The aforesaid submissions are without any merit and are merely surmise and conjecture. In any event, the plaint in the instant action has been filed on 18.08.2004 and in terms of the government gazette No. 1223/5 dated 11.02.2002 limits of jurisdiction which were to be operative from 15.02.2002 clearly indicate that Pamankada West falls within the jurisdiction of Colombo and not within the jurisdiction of Mt. Lavinia. In the circumstances the lack of jurisdiction is apparent and there was no burden cast on the petitioner to lead viva voce evidence, such as Grama Sevaka, Registrar and Fiscal of the Court to testify as to the exact location of property in suit and that its outside the jurisdiction of such Court for the trial Judge is presumed to know the local limits of his or her jurisdiction. In the circumstances the facts in *Robinson Fernando's*⁽⁴⁾ case has no application to the facts of this case for the same reasons that part of Section 9 of the Civil Procedure Code which provides for a situation where there is uncertainty as to the Court that has jurisdiction also has no application to the instant action.

The aforesaid provision in Section 9 of the Civil Procedure Code reads as follows:

"When it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more courts any immovable property is situate, any one on the those courts may, if satisfied that there is ground for the alleged uncertainty record a statement to that effect, and thereupon proceed to entertain and dispose of any action relating to that property; and its decree in the action shall have the same effect as if the property were situate within the local limits of its jurisdiction".

However in view of the material placed before Court specially the two documents viz : the certificate of the Grama Sevaka Niladhari marked A7 and the gazette notification marked A8 there cannot be any uncertainty as to the jurisdiction of the Court Counsel also cited the *W. Robinson Fernando vs. Henrietta Fernando* (supra) wherein Court observed :

"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 has no jurisdiction to raise the matter and prove the necessary facts".

As stated above, the certificate from the Grama Sevaka Niladhari Pamankada West counter signed by the Division Secretary Thimbirigasyaya maked A7 and a copy of the government gazette notification marked A8 was available to the learned District Judge when she was called upon to decide the question whether the District Court of Mt. Lavinia had jurisdiction to entertain the action.

In any event, journal entry No. 6 dated 22.09.2004 reads as follows :

2004.09.22

විරෝධතා සහ උත්තරය

විරෝධතා ඉදිරිපත් කරයි. අධිකරණ බලය නොමැති බවට.

චාරණ නියෝගය දීර්ඝ කරමි. විමසීම දේශණ මගින් නියම කරමි. විමසීම දේශණ සඳහා උත්තරය පසුවට.

It appears that the learned District Judge had directed the inquiry to be concluded by written submissions. Having directed so she cannot now be heard to say that the petitioner should have proved that she lacked jurisdiction to hear and determine the case by viva voce evidence.

For the foregoing reasons, I would set aside the impugned order of the learned District Judge dated 15.12.2004 with costs fixed at Rs. 20,000/-

WIMALACHANDRA, J. - I agree.

Application allowed.