

1950

Present : Basnayake J.

KULANTHAVELU, Appellant, and MUTHUSAMY
AIYAR Respondent

S. C. 72—C. R. Trincomalee, 8,141

Court of Requests—Appeal—Matters of law not stated in petition of appeal—Civil Procedure Code, s. 383A.

In an action for debt, damage or demand, where there is no right of appeal from a judgment pronounced in a Court of Requests except on a matter of law, the Court of Appeal will not hear arguments on matters of law which are not stated in the petition of appeal.

APPEAL from a judgment of the Court of Requests, Trincomalee.

C. Thiagalingam, with *A. Gnanaprakasam* and *V. Arulambalam*, for the 1st defendant-appellant.

H. W. Thambiah, with *S. Sharvananda*, for the respondent.

February 13, 1950. BASNAYAKE J.—

This is an action by one Soona Muthusamy Aiyar who claims to be the officiating priest of the Kadatkarai Pillaiyar Temple against the first defendant-appellant one Kulanthavelu who is the manager of the temple and six others who are members of the managing committee of the temple. The plaintiff seeks to recover the sum of Rs. 120 as wages due to him for the four months of May, June, July and August, 1948, and further wages at Rs. 30 per mensem from September 1, 1948, till payment in full.

The facts stated by the plaintiff are not contradicted by the defendants. It appears from the uncontradicted evidence of the plaintiff that the

managing committee had asked him to continue to officiate as priest of the temple for the months for which he claims wages. It seems to me that on the facts the plaintiff's claim is entitled to prevail.

But Mr. Thambiah for the respondent takes a preliminary objection to my hearing argument on the facts on the ground that under section 833A (1) of the Civil Procedure Code the appellant has no right of appeal except on a matter of law. He submits that as the matter of law is not stated in the petition of appeal the appellant is not entitled to a hearing. He cites in support the case of *Silva v. Zoysa*¹. In that case Nihill J., after referring to some earlier decisions, observes:

“ It is one of the special rules that there shall be no right of appeal from any final judgment unless upon a matter of law and judicial decision has determined that this court cannot hear arguments on matters of law not directly and succinctly stated in the petition of appeal and I am not prepared to go beyond that.”

Learned counsel for the appellant confesses that the petition of appeal does not contain the questions of law he wishes to argue.

I see no reason for departing from the rule stated in the authority cited by learned counsel for the respondent, and I reject the appeal with costs.

Appeal rejected.