

1971 Present: H. N. G. Fernando, C.J., and Wijayatilake, J.

K. NADESAN, Appellant, and Mrs. D. M. CANDIAH,
Respondent

S. C. 137/67 (F)—D. C. Colombo, 62485/M

Business Names Ordinance—Declaration made thereunder as to ownership of a business—Evidential value—Estoppel by representation—Proof.

Where a person has made a declaration under the Business Names Ordinance that he is the sole proprietor of a business, there is nothing in that Ordinance which gives conclusive effect to such declaration when in fact the business was carried on not by him but by another person.

A plea of estoppel by representation cannot succeed unless a representation was made to some party and that party was induced by the representation to a particular course of conduct.

APPEAL from a judgment of the District Court, Colombo.

C. Ranganathan, Q.C., with C. Chellappah and M. Sivarajasingham, for the 1st defendant-appellant.

R. Manikkavasagar, with C. Ganesh, for the plaintiff-respondent.

Cur. adv. vult.

November 18, 1971. H. N. G. FERNANDO, C.J.—

The plaintiff in this case entered into an agreement with “the Middle-Class (L.C.) Housing Company” by which the Company agreed to construct a house for the plaintiff.

Although the plaintiff paid certain sums of money to the Company under this contract, little construction work was done by the Company, and ultimately the plaintiff sued the two defendants for damages on account of the failure of the Company to carry out the contract, and the learned District Judge entered decree ordering the two defendants jointly and severally to pay the plaintiff a sum of Rs. 15,000 and costs.

Although the 2nd defendant filed answer, he did not participate at the trial and he has not appealed against the decree. This appeal is only by the 1st defendant.

The position of the 1st defendant was that he had no concern or interest whatsoever in the Company, and that the business of the Company was carried on solely and for the benefit of the 2nd defendant; and the learned Judge records in the judgment a

finding "that it was the 2nd defendant who ran the business, entered into the contract and did all the work, and that he received all the monies". In reaching that finding the Judge obviously accepted the truth of the evidence of the 1st defendant. Nevertheless he answered in the affirmative the first issue, which was whether *the 1st defendant* had carried on the business of the Middle-Class (L.C.) Housing Company. This answer depended entirely on a document P4 which was a Certificate of Registration of the Business Name of this Company, and on the admission of the 1st defendant that he had furnished to the Registrar of Business Names a declaration that he was the sole proprietor of this business. Ordinarily, a declaration of this kind would be strong evidence that the person who made such a declaration did in fact carry on the business in question. But as I have already pointed out, the learned Judge accepted as true the evidence that in fact the business was not carried on by the 1st defendant. This involved also acceptance of the 1st defendant's explanation that he was induced by the 2nd defendant to sign the declaration relating to the business name of the latter's business. There is nothing in the Business Names Ordinance which gives conclusive effect to a declaration made under it, and if, as the Judge found, the 1st defendant had actually no concern whatsoever in the business, then the fact that he had made a false declaration cannot serve to establish a non-existent fact. I must hold for these reasons that the issue to which I have referred had necessarily to be answered in favour of the 1st defendant.

Counsel for the plaintiff in appeal contended that because the 1st defendant has held out in his declaration that he was the proprietor of this business, it is not open to him now to deny the truth of this representation. This contention is in substance that the 1st defendant is now estopped from denying that he was the proprietor of the business; but no plea of estoppel was raised at the trial, nor could such a plea have succeeded in view of the evidence of the plaintiff and her brother. Both of them admitted that they were not aware at the time when this contract was negotiated that the 1st defendant was in any way concerned with the business of this Company. That being so, a plea of estoppel could not have succeeded because a representation does not create an estoppel unless it was made to some party, and unless that party was induced by the representation to a particular course of conduct. It is obvious from the evidence of the plaintiff that no representation was made to her by the 1st defendant either expressly or by implication, and that she did not enter into this contract on the faith of any such representation.

For these reasons the appeal is allowed and the decree under appeal is amended to provide that the 2nd defendant only will pay to the plaintiff a sum of Rs. 15,000 together with costs, and that the action against the 1st defendant is dismissed with costs.

The plaintiff must pay to the 1st defendant the costs of this appeal.

WIJAYATILAKE, J.—I agree.

Appeal allowed.

