
**RAJAPAKSE
VS.
COORAY**

COURT OF APPEAL
IMAM. J.
SRISKANDARAJAH.J.
CA LA 433/2003 (LG)
DC PANADURA 1600/L.
OCTOBER 15, 2004.
JULY 7, 2005.

*Civil Procedure Code- Sections 151, 154 (1), 155- Evidence Ordinance,
Section 90 -Identification of a document ? - Admissibility.*

The plaintiff-respondent instituted action against the defendant-petitioner seeking a declaration of title to the land in question. The defendant-petitioner commenced the case, and while giving evidence sought to produce a receipt dated 10.10.1960. The plaintiff-respondent objected on the basis that the said document has not been properly identified by the witness. The plaintiff-respondent was permitted to cross examine the witness in order to determine whether the witness could identify the document in issue.

The trial Judge upheld the objection and disallowed the document.

HELD:

- (1) Before a witness is allowed to identify a document, he should generally be made by proper questioning to state the grounds of his knowledge with regard to it.
- (2) If on the document being tendered the opposing party objects to it being admitted in evidence, two questions arose for the Court (a) whether the document is authentic (b) whether it constitutes legally admissible evidence as against the party who is sought to be affected by it.
- (3) A close analysis of the evidence of the petitioner reveals her incapacity to identify the receipt, her lack of knowledge of the relevant circumstances.

APPLICATION for leave to appeal from an order of the District Court of Panadura.

Lasitha Kanuwanaarachchi for defendant-petitioner.

Saliya Peiris for plaintiff-respondent.

Cur. adv. vult.

September 22, 2005

IMAM., J.

The Defendant-Petitioner (hereinafter referred to as the petitioner) has presented this application seeking to grant leave to Appeal against the order of the Learned District Judge of Panadura dated 30.10.2003, and to set aside the aforesaid order, amongst other reliefs prayed for. Leave to Appeal was granted on the question of admissibility of the document (receipt) dated 10.10.1960 marked as ට෦ and sought to be produced at the trial by the Petitioner on 24.11.2004.

The facts of the case are briefly as follows: The Plaintiff- respondent (hereinafter referred to as the Respondent) instituted action bearing No. 1600/L in the District Court of Panadura against the Petitioner seeking a declaration of title with regard to the land morefully described in the schedule to the plaint, and an order ejecting the petitioner from the said property, *inter alia* other reliefs sought for. This case was taken up for trial on 20.05.2003 with 4 issues being raised by the Respondent, and 09 issues raised by the Petitioner. The Petitioner commenced the case and while giving evidence sought to produce a receipt dated 10.10.1960 attempting to mark the receipt as 'ට෦' to which application the Respondent objected on the basis that the said document had not been sufficiently identified by the witness namely the petitioner. With this regard only the Respondent was permitted to cross examine the witness in order to determine whether the witness (Petitioner) could identify the document in issue. Subsequently the learned District Judge delivered his order on 30.10.2003 upholding the

objection raised by the Respondent and hence disallowing the Petitioner to mark the Document as  1 .

In her statement of objections the Petitioner does not dispute the ownership of the respondent to the relevant property and submits that the aforesaid property was rented out by the successor to the respondent to Benedict Fonseka her husband for a monthly rental of thirty five Rupees; that since 1960 the husband of the Petitioner enjoyed the buildings in the property as a tenant, and that since the death of her husband, the Petitioner has become the statutory tenant. On examination of the original receipt ( 1) it is apparently an original receipt alleged to have been issued to Benedict Fonseka by Emaly C. Cooray. The evidence of the Petitioner was that she had not been a witness to the said transaction, and that her husband Benedict Fonseka had passed away.

It was stated by the Petitioner in her evidence that she and her husband Benedict Fonseka came as tenants of the Respondent and his predecessors and paid rent at the rate of Rs. 19/- on which her husband Benedict Fonseka was given receipts by Emaly C. Cooray and Daya Cooray the holder of the power of Attorney of the respondent acting as agents of the Respondent. It was contended on behalf of the Petitioner that she has a fair knowledge of the aforesaid documents, that she obtained these documents through her husband, who is now dead, and that these receipts have been produced through proper custody. Counsel for the Petitioner referred to section 154(1) of the Civil Procedure Code which states, "*Every document or writing which a party intends to use as evidence against his opponents must be formally tendered by him in the course of proving his case at the time when its contents or purports are first immediately spoken to by a witness*" It is further contended on behalf of the petitioner that the Document  1 was properly listed, and that the Respondent did not object to the marking of  1 on this ground. It was however accepted by the Petitioner that the Petitioner was unable to identify the contents of  1 as her eye sight is weak and that she is illiterate. Section 90 of the Evidence Ordinance was relied on by Counsel for the Petitioner, who contended that the contents of  1 need not be proved as it is a Document more than 30 years old, being dated 10.10.1960. Section 90 of the Evidence Ordinance states that "*Where any document purporting or proved to be thirty years old is produced from any custody which the Court in the particular case considers proper, the Court may*

presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's hand writing and in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to be executed."

It was submitted on behalf of the Respondent that the Petitioner had shown the Power of Attorney Holder of the Respondent (father of the Respondent) and said that it was he who had given the receipt 01 and other receipts. It was pointed out that the receipt sought to be marked as 01 was signed by Emaly C.Cooray, and that this too indicates that the Petitioner had failed to identify 01. It was also averred on behalf of the respondent that 01 had not been properly listed, as the list of documents refer to assessment No. 238/1, although the document relates to assessment No. 238. It was further pointed out that the explanation to section 154 of the Civil Procedure Code states *that if on the document being tendered the opposing party objects to its being admitted in evidence, two questions arise for the Court, firstly whether the document is authentic, in other words whether it is what the party tendering represents it to be. Secondly whether it constitutes legally admissible evidence as against the party who is sought to be affected by it.* This principle it was submitted is contained in E. R. S. R. Coomaraswamy's "The Law of Evidence," Volume II Book 1 at page 116.

Section 155 of the Civil Procedure Code was also referred to by the Respondent, which states *"Before a witness is allowed to, in anyway, identify a document, he should generally be made, by proper questioning, to state the grounds of his knowledge with regard to it."*

The Petitioner although suffering from weak eye sight and being illiterate, in evidence had admitted her difficulty in identifying 01 ,and also displayed a lack of knowledge with regard to the relevant circumstances under which 01 was written. In her evidence she stated that Emaly Cooray had probably signed 01 and other receipts which were given to her husband Benedict Fonseka, although she did not see the transaction. A close analysis of the evidence of the Petitioner, reveals her incapacity to identify 01, her lack of knowledge of the relevant circumstances, and the fact that the Learned District Judge has not

violated sections 151, 154 and 155 of the Civil Procedure Code is also taken into consideration.

We are of the view that the Learned District Judge of Panadura has correctly evaluated the evidence of the Petitioner, and has rightly refused to permit the document sought to be marked as D1 as it has not been properly identified by the Petitioner.

For the aforesaid reasons we dismiss this appeal of the Petitioner without costs and confirm the order of the Learned District Judge of Panadura dated 30.10.2003 (P5).

SRISKANDARAJAH, J. – I agree.

Appeal dismissed.
