

1957

Present : T. S. Fernando, J.

A. SARANELIS, Appellant, and D. WIJESURIYA, Respondent

*S. C. 86—C. R. Hambantota, 6715**Appeal—Court of Requests—Action for debt, damage or demand—Right of appeal—Civil Procedure Code, s. 833A.*

In an appeal, without leave of Court, from a judgment of a Court of Requests in a case which reduced itself to one of debt, damage or demand at the time the issues were framed, it is not competent for the appellant to argue a matter of law not specifically stated in the petition of appeal.

A PPEAL from a judgment of the Court of Requests, Hambantota.

E. B. Sattrukulasinghe, with *E. B. Vannitamby*, for the defendant appellant.

S. W. Walpita, with *R. L. N. de Zoysa*, for the plaintiff-respondent.

Cur. adv. vult.

November 27, 1957. T. S. FERNANDO, J.—

The plaintiff in this case sued the defendant to recover a sum of Rs. 290 being the value of 4 amunams of paddy which the plaintiff alleged the defendant had to give him as his paraveni share of the 1955 Yala crop of a field called Hataliyakelle. The plaint contained a prayer for continuing damages and for ejection of the defendant, but these reliefs were not pressed, and were abandoned at the stage of the framing of issues. In the result the action reduced itself to an action for a debt, damage or demand within the meaning of section 833A of the Civil Procedure Code.

No leave to appeal has been granted to the defendant, and he can therefore advance in this Court only a ground of law stated in the petition of appeal. I may, however, state that I have perused the evidence led in the case and find that the learned Commissioner has addressed his mind to all the disputed facts before reaching the conclusion he did.

The first of the two points urged on behalf of the appellant in this Court was that the agreement relied on by the plaintiff was not enforceable as it had not formed the subject of a notarial instrument and was by reason of section 2 of the Prevention of Frauds Ordinance of no force at law. Section 3 of the same Ordinance makes the provisions of section 2 inapplicable in the case of agreements for the cultivation of paddy lands for any period not exceeding twelve months. Counsel for the defendant, in an attempt to get over the exemption in regard to notarial attestation created in favour of agreements for the cultivation of paddy lands for a period not exceeding twelve months sought to raise in this Court the question that the land to which the agreement sued upon related was a controlled paddy land within the meaning of the Paddy Lands Act, No. 1 of 1953. This question assumes importance for the reason that section 4 (i) of the Act renders invalid the letting or a tenancy of a controlled paddy land for a period less than five years. Counsel for the

plaintiff objected to argument being had on any question of law not raised in the petition of appeal. It should be noted that when issues were being framed, the Court below ruled out an issue as to "whether the Court had jurisdiction under section 10 (1) of the Paddy Lands Act". No exception has been taken in the petition of appeal to the rejection of this issue. Many cases were cited at the argument before me relating to the raising of new grounds of appeal at the hearing, but it is sufficient if I refer to only one of them as being particularly applicable to the present matter. In the case of *Gordon Brooke v. Peera Veda*¹, Layard, C.J. held that in a case from a Court of Requests where an appeal lies only on a matter of law, the matter of law must be stated in the petition of appeal, and that no matter of law, not so stated can be argued at the hearing of the appeal. I would respectfully follow this decision and hold that it is not competent for the appellant to argue a matter of law not specifically stated in his petition of appeal. I might add that as the case reduced itself to one of debt, damage or demand at the time issues were framed, the case of *Ranasinghe v. Silva*² to which defendant's counsel referred me is distinguishable. In this state of affairs it does not become necessary for me to consider whether I should look into certain Gazettes which have been referred to by appellant's counsel to enable me to be satisfied that the field Hataliyakelle is a controlled paddy land.

The appeal is dismissed with costs.

Appeal dismissed.
