

1948

Present : Dias and Basnayake JJ.

FERNANDO, Appellant, and SAMARASEKERE, Respondent.

*S. C. 175—D. C. Negombo, 13,550**Civil Procedure Code—Averment in plaint—No denial in answer—Admission—Section 75.*

Where a defendant does not deny an averment in the plaint he must be deemed to have admitted that averment.

APPEAL from a judgment of the District Judge, Negombo.

S. W. Jayasuriya, for the defendant, appellant.

H. A. Kottegodda, for the plaintiff, respondent.

Cur. adv. vult.

March 19, 1948. BASNAYAKE J.—

This is an action for declaration of title to certain undivided shares in an allotment of land called Delgahawatta at Madelgomuwa in the District of Negombo. The defendants appeal from the judgment of the learned District Judge.

The only point taken by counsel for the appellant is that there is no evidence to show that the plaintiffs are the heirs of one Miguel Appuhamy to whom along with three others the land in question was allotted in common in partition proceedings in the Court of Requests of Gampaha.

It appears from the plaint that Miguel Appuhamy died leaving the third to the eighth plaintiffs as his heirs. While not denying this averment in his answer the appellant goes on to say that he makes no claim to the share allotted to Miguel Appuhamy. It is admitted by the Counsel for the respondents that there is no evidence that the plaintiffs are the heirs of Miguel Appuhamy. He however relies on the fact that it was never denied or disputed throughout the proceedings.

Section 75 (d) of the Civil Procedure Code requires that the answer should contain a statement admitting or denying the several averments of the plaint, and setting out in detail plainly and concisely the matters of fact and law, and the circumstances of the case upon which the defendant means to rely for his defence. If the defendant disputed such an important averment the proper place for him to raise it was in his answer which he was free at any stage of the proceedings to amend with the leave of Court. The provisions of section 75 are imperative and are designed to compel a defendant to admit or deny the several allegations in the plaint so that the questions of fact to be decided between the parties may be ascertained by the Court on the day fixed for the hearing of the action. A defendant who disregards the imperative requirements of this section cannot be allowed to take advantage of his own disobedience of the statute. To permit such a course of conduct would result in a nullification of the scheme of our Code of Civil Procedure.

We hold therefore that the appellant cannot take this objection in appeal. His failure to deny the averment in accordance with the requirements of the statute must be deemed to be an admission by him of that averment.

Learned counsel for the appellant submitted to me in Chambers after we reserved judgment the cases of *Lokuhamy v. Sirimala*¹ and *Fernando v. The Ceylon Tea Company, Ltd.*² These cases have no bearing on the matter we have to decide in the present case. They deal with the effect of the failure of a plaintiff to deny by replication the statements made by a defendant in his answer.

The appeal is dismissed with costs.

DIAS J.—I agree.

Appeal dismissed.

