

1931

*Present : Akbar J.*

APPUNAIDE v. SINNAPPUHAMY.

199—A. C. R. Ratnapura, 173.

*Court of Requests—Framing of issues—Duty of Commissioner—Amendment of pleadings—Order for costs.*

In the Court of Requests it is the duty of the Commissioner to frame the issues and, where it is necessary for the purpose, to allow an amendment of the pleadings, subject to an order for costs.

**A**PPEAL from a judgment of the Commissioner of Requests, Ratnapura.

*Ranawake*, for defendant, appellant.

*E. G. P. Jayatileke* (with him *Abeysekere*), for plaintiff, respondent.

February 20, 1931. AKBAR J.—

On the day of trial when the issues were suggested counsel for the defendant wished to add an issue on the law relating to the prior registration of the defendant's deed over the plaintiffs. This was objected to, and on the authority of the case of *Saibo v. Sirmala*<sup>1</sup> the learned Commissioner disallowed the issue and further refused to allow the defendant to amend the answer even on terms. Perhaps the learned Commissioner is ignorant of the fact that there is a string of modern decisions where it has been held that in a Court of Requests case technicalities of this kind should not be allowed to cloud the real issues in the case. Under the Civil Procedure Code the burden is cast on the learned Commissioner to frame issues himself and even to examine the plaintiff and the defendant for the purpose of framing those issues. It is a duty cast on the Court, and if the parties have misled the Court it is the duty of the learned Commissioner to punish the guilty party in costs but to allow an amendment of the pleadings which are really material to the case. I might cite two authorities, see the case of *Seneviratne v. Kandappah*<sup>2</sup> and *Fernando Mudalali v. Fernando*.<sup>3</sup>

<sup>1</sup> 2 C.L.R. 146

<sup>2</sup> 20 N.L.R. 60

<sup>3</sup> 3 Leader Reports 10.

In my opinion the issue as to the registration of the deed is material for the proper decision of the case. Moreover, the learned Commissioner has not given his opinion on the question of prescription raised in this case. I think the justice of the case requires that it should go back for a re-trial on all the four issues proposed in this case.

I follow the order of the Supreme Court in the case of *Seneviratne v. Kandappah* (*supra*) with regard to costs and direct that the defendant should be allowed an opportunity to amend his answer on payment of the costs of the amendment, and, in view of the fact that the trouble has arisen from his default, I would make no order as to the costs of this appeal.

The case will go back for a re-trial before another Judge, and fresh evidence may be recorded. All the costs incurred by the parties, except in so far as I have said otherwise, will be costs in the cause.

*Sent back.*

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