SOBANAHAMY

VS

SOMADASA

COURT OF APPEAL.
EKANAYAKE, J.
RANJITH SILVA, J.
CA 707/91.
DC, MATARA 289/SPL.
FEBRUARY 16, 2005.

Civil Procedure Code, section 187 - Issues - Necessity to answer all - Bare answers without reasons?–Judgment to be in conformity with section *187 - Failure?*

The plaintiff–appellant instituted action seeking a declaration of title to the land in question and to eject the defendant respondent from the subject matter. The trial Court dismissed the plaintiff's action. On appeal–

HELD:

1. The Trial Judge has failed to answer issues 1-7 raised by the plaintiff. Having answered only the issues of the defendant the trial Judge has erred in arriving at the finding that therefore the need does not arise to answer the plaintiff's issues. This is a cardinal error.
2. Bare answers without reasons raised in a trial are not in compliance with the requirement of section 187.
3. Bare answers to issues are insufficient unless all matters which arise for decision under each head are examined.

Per Chandra Ekanayake, J. :

"The impugned judgment is not in conformity with the provisions of section 187 and failure of the trial judge to examine the evidence and to answer the issues of the plaintiff has definitely prejudiced the substantial rights of the parties"

APPEAL from the judgment of the District Court of Matara.

Cases referred to :

Dona Lucinahamy vs. Cicillinahamy - 59 NLR 214

Rohan Sahabandu for plaintiff - appellant.

N. R. M. Daluwatte, P. C. for defendant - respondent.

Cur. adv. vult.

October 20, 2005.

CHANDRA EKANAYAKE, J.

This is an appeal preferred by the Plaintiff - Appellant (hereinafter sometimes referred to as "the Plaintiff" from the judgment of the learned Additional District Judge of Matara dated 02.10.1991 moving to set aside the same and for the reliefs prayed by the Plaintiff in the prayer to the plaint.

The Plaintiff has instituted this action in the District Court of Matara seeking *inter alia*, a declaration of title to the subject matter *viz* : Lot No. 3 of the land called and known as "Gederawatta" situated in Welihena

morefully described in paragraph 3 of the plaint, a declaration for cancellation of the deed of mortgage bearing No. 36791 dated 24.03.1960 on receipt of Rs.500 by the Defendant, damages as averred in sub-paragraph (3) of the prayer to the plaint and for ejectment of the Defendant and all those holding under him from the subject matter.

The Defendant - Respondent (hereinafter sometimes referred to as "the Defendant") by his amended answer dated 26.05.1982, whilst admitting the jurisdiction of this Court and averments in paragraph 3 and 4 of the plaint specifically denied the accrual of a cause of action and the rest of the averments in the plaint and prayed for a dismissal of the Plaintiff's action, for a declaration that the Defendant be declared entitled to the aforesaid rights mentioned in the amended answer. After two abortive trials. a trial de novo had commenced on 30.01.1990. On this day both parties had admitted that the subject matter was owned by the Plaintiff as averred in paragraph 4 of the plaint and that M. P. Carolis and Lokuhamy by deed of mortgage bearing No. 27453 dated 01.07.1946 had mortgaged same to one M. P. Solomon and that he had re transferred the Mortgage to M. P. Somadasa, the Defendant in this case by deed bearing No. 36791. Case had proceeded to trial on issues 1 to 7 raised on behalf of the Plaintiff and issues 8 to 11 raised on behalf of the Defendant.

The Plaintiff's case had been concluded with her evidence. The Defendant , Registrar of the District Court of Matara one S. P. Gunapala and one M. Gamage Gunapala (Secretary of the Conciliation Board of Godapitiya) had testified for the case of the Defendant. Thereafter the impugned judgment had been pronounced by the learned judge dismissing the Plaintiff's action.

On a careful consideration of the judgment it is found that he has correctly identified the question for determination as whether there had been a settlement with regard to this land dispute before the Concilliation Board as contended by the defendant. The Learned Judge while observing the failure on the part of the Plaintiff to call any witnesses to place evidence with regard to the settlement arrived upon between the parties before the Conciliation Board in application No.297 had proceeded even to consider the documents marked V2 and V3 being documents pertaining to the settlement arrived upon by the parties before the Board and the certificate of settlement issued by the Board respectively. But the learned Judge has

answered issues 8 to 11 raised on behalf of the defendant in his favour and has proceeded to record as follows : (As appearing at page 379 of the brief).

"ඒ අනුව පැමිණිල්ලේ විසඳිය යුතු ප්‍රශ්න වලට පිළිතුරු දීමක් පැන නගින්නේ නැත"

From the judgment it is clear the that the learned Judge has totally failed to answer issues 1 to 7 raised on behalf of the plaintiff. Having answered only the issues of the defendant the learned Judge has erred in arriving at the finding that therefore the need does not arise to answer plaintiff's issues.

In the case of *Dona Lucihamy vs. Cicilinahamy*[1] it was held that :

> **"Bare answers without reasons, to issues or points of contest raised in a trial are not in compliance with the requirement of the section 187 of the Civil Procedure Code."**

Per L. W. De Silva, A. J. at 216 ;

> **" Bare answers to issues or points of contest- whatever may be the name given to them - are insufficient unless all matters which arise for decision under each head are examined."**

In the instant case the learned Judge has not only failed to give reasons when answering the issues, but totally failed to answer issues 1 to 7, and in my view which is a cardinal error committed by the learned Judge and therefore the judgment is not in conformity with section 187 of the Civil Procedure Code.

Section 187 thus reads as follows :-

> **"The judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision ; and the opinions of the assessors (if any) shall be prefixed to the judgment and signed by such assessors respectively."**

For the above reasons I conclude that the impugned judgment is not in conformity with the provisions of the above section and failure of the trial Judge to examine the evidence and to answer the issues of the plaintiff has definitely prejudiced the substantial rights of the parties.

In those circumstances this Court is left with no alternative but to order a retrial. Accordingly, the appeal is allowed and the impugned judgment of the learned District Judge is hereby set aside. A trial *de novo* is hereby ordered and the learned District Judge is directed to conclude the trial as expeditiously as possible. Each party must bear their own costs so far incurred, both here and in the Court below.

The Registrar of this Court is directed to forward the record in Case No. 289/SPL. to the respective Court forthwith.

RANJITH SILVA J. – *I agree.*

Appeal allowed.
Trial de Novo ordered.