

IN THE SEYCHELLES COURT OF APPEAL

In the matter between:

LAILA PADAYACHY

APPELLANT

VERSUS

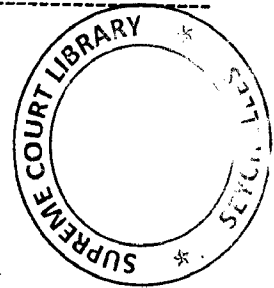
**SHEELA PADAYACHY
AND ANOTHER**

RESPONDENTS

SCA No. 15 of 2002

[Before: Ayoola, P. Silungwe and De Silva J.J.A.]

*Ms. D. Zatte for the Appellant
Mr. K. Shah for the 1st Respondent
Mr. P. Pardiwalla for the 2nd Respondent*



JUDGMENT OF THE COURT

(Delivered by De Silva, J.A.)

The 1st appellant (the 2nd and 3rd appellants having withdrawn their appeals) was the 1st plaintiff in the trial court. The plaint was filed pursuant to section 172 of the Code of Civil Procedure. Section 172 reads thus: "*Any person whose interests are affected by a judgment rendered in a suit in which neither he nor persons represented by him were made parties, may file an opposition to such judgment*". However, in the plaint filed in the appeal before us, there is no averment that in the previous action (Civil Side 150/98) the appellant was not made a party nor were persons represented by her made parties in that action.

This is an essential element which has to be averred in a plaint filed in terms of the provisions of section 172 of the Code of Civil Procedure. It is relevant to note that section 71(d) of the Code of Civil Procedure states that the plaint must contain "*A plain and concise statement of the circumstances constituting the cause of action and where and when it arose and of the material*

facts which are necessary to sustain the action.” Therefore, ex facie the plaint no cause of action was disclosed. This objection was taken in limine litis by the 1st respondent (then the 1st defendant) in her statement of defence. The 2nd respondent (then the 2nd defendant) too pleaded in limine litis that the appellants have no locus standi to bring the action and the plaint should be struck out.

Learned counsel for the 1st appellant relied on 4 grounds of appeal which were closely linked to one another and may be conveniently considered together. The pith and substance of the contention advanced on behalf of the 1st appellant was that the learned trial judge erred in making findings of fact at the stage when there were only preliminary “arguments in limine litis”. The submission was that findings of fact were mainly in respect of the plaint in the previous action, Civil Side 150/1998 and a power of attorney which were two documents attached to the statement of defence filed by the 2nd respondent.

On a careful reading of the judgment, it is clear that the trial court had not reached findings of fact but had examined the averments in the plaint in the previous action, and considered the question whether the appellants had the locus standi to bring the action in terms of section 172 of the Civil Procedure Code.

It is to be noted that the pleadings were before the trial court and, in the context of the provisions of section 172 of the Code of Civil Procedure, it was necessary for the trial court to examine the averments on the face of the plaint. There was no question of reaching findings of fact in relation to the plaint. This is evident from the reasoning of the learned trial judge:- *“It is clear from a plain reading of section 172 (supra) that the statutory right to apply for a remedy under this particular section of the law, is available only to those who were neither parties nor had representation in the suit, in which the impugned judgment was rendered.... Therefore the plaintiffs in this case in order to bring an action under section 172 should ...have a locus standi to institute this action... In this respect, I*

carefully perused the pleadings in the plaint of the previous suit Civil Side No. 150 of 1998 instituted by one Sheela Padayachy who is non-else (sic) than the 1st defendant in the present action. Paragraph 1 of the plaint reads thus:- The plaintiff is acting on her own behalf and on behalf of her mother, sisters and brother namely, ... (d) Laila Padayachy, (e) Sarala Padayachy and (f) Sutha Padayachy... Undisputedly the daughters above named (d), (e) and (f) are respectively the 1st, 2nd and 3rd plaintiffs in the present action. It is very evident from the above pleadings that Sheela Padayachy who was then plaintiff in the previous suit has instituted that action obviously on her own behalf and on behalf of all the heirs of the late Vasudeva Padayachy against a 3rd party... in terms of section 73 of the Code of Civil Procedure..."

Therefore the submission that the trial court made findings of fact at the stage of a plea in limine litis is devoid of merit. In essence, what the trial court did was to direct its mind to the averments ex facie the plaint. The learned trial Judge (Karunakaran J.) did what he was entitled to do, having regard to the issues that arose for consideration.

In the result, the appeal is dismissed with costs.

E.O. AYOOLA
PRESIDENT

A.M. SILUNGWE
JUSTICE OF APPEAL

G.P.S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 5..... Day of December 2003