APPEAL

Ref: BASL/ 01/08/2002

***Appeal** – need to pray for specific reliefs, discussed – right to consider intention of parties invoking appellate jurisdiction, analysed.*

Daluwatte & Another Vs Sampath Bank Ltd. & Another

C. A. L. A. 164/2001.
D. C. Colombo 5666/Sp

Decided by **UDALAGAMA, J. & NANAYAKKARA, J. on** 27th June, .2001.

In the Application for Leave to Appeal two preliminary objections to the application were raised by the Respondents : (1) that the relief claimed had not been properly pleaded ; and (2) although the Petitioners sought to vary the order dated 10.03.2001 that no application to dismiss the action in the original Court had been pleaded. As regards the first objection, their Lordships, on perusing the petition found that there was ample material to the effect that it was an application for leave to Appeal, and as such, the Respondents could not have been misled as to the nature of the Application. As regards the second objection, namely; the absence from the petition of a prayer to dismiss the main application, their Lordships were of the view that the relevant objection pleaded before the Court was premature and in any case such relief would be forthcoming only from the original Court and not from an appellate Court.

CIVIL PROCEDURE

Ref: BASL/02/08/2002

***Civil Procedure Code** - Section 341-Execution of writ pending appeal-Procedure on deciding and substituting legal representative in place of the deceased Judgement Creditor, discussed.*

Padma Gunawardena & Two Others Vs Hema Gunawardena

C. A. L. A. 125/2000
D. C. Galle case No. 11944/L

Decided by :**UDALAGAMA, J.** and **NANAYAKKARA, J. on** 20th September, 2001

One Mabel Gunasinghe who owned the property, the subject matter of this action, permitted her son Dharmapala and family to occupy same. Dharmapala died in 1986. His widow and the children continued to occupy the premises. Mabel Gunasinghe filed action in 1991 to eject the widow and her Children.

The learned District Judge held with the Plaintiff and entered judgement in her favour. The widow who was the defendant appealed. Mabel Gunasinghe moved for writ pending appeal, but before execution she died. The Petitioners to this application applied for substitution in place of the deceased Mabel Gunasinghe in order to execute writ. It is admitted that they are the children of the deceased. However, their claim to be substituted in place of the deceased was based on a Deed of Gift dated 18.05.99, which the Defendant-Responded claimed was a forgery. The Defendant- Respondent objected to the Petitioner's application to be substituted in the place of the deceased, Mabel Gunasinghe, and subsequent to an inquiry pertaining to that matter, the learned District Judge, by his Order dated 12.05.2000, rejected the application of the Petitioners for substitution. It is also to be noted that the learned District Judge rejected the said application for the time being only.

After perusing the proceedings in the District Court, their Lordships held that the learned District Judge was correct in coming to a finding that a dispute had arisen between the Petitioners and others as to who should be the legal representatives of the deceased. Their Lordships concurred with the decision of the District Court to lay-by the Application for Writ for the time being, to enable Court to decide the legal representatives of the deceased Judgment-Creditor.

CIVIL PROCEDURE

Ref: BASL/03/08/2002

***Civil procedure Code** – Section 78 – Necessity to serve copies of Answer on affected parties when claim in reconvention pleaded, discussed.*

Jayaananda Vs Liyanaarachchi & 13 Others

C.A.No. 814/95 (Rev)
D.C.Panadura No.2906/Mort

Decided by **JAYAWICKREMA, J.** &
RAJA FERNANDO, J. on 16th March, 2001

The Plaintiff-Respondent instituted action in the D.C. against the 1st Defendant-Petitioner and other Defendants-Respondents on a Deed of Mortgage. According to the Plaint, the land in question was mortgaged on a secondary mortgage to the 2nd to 9th Defendants- Respondents and no relief was claimed against the 2nd to 9th Defendants. According to the record only the 5th and 7th Defendants have filed answer, and there is nothing on record to indicate that a copy of such answer was served on the other Defendants. After action was instituted by the Plaintiff-Respondent the 1st Defendant-Petitioner, having settled the claim in full of the Petitioner-Respondent signed the record accepting that position. Thereafter the 1st Defendant-Petitioner has not taken part in the proceedings.However, the 5th Defendant -Respondent has taken steps to have his claim on the secondary mortgage against the 1st Defendant-Petitioner raised in his Answer proceeded with ex parte and got an Order in his favour. The 1st Defendant's application to purge his default and the Notice of Appeal were rejected by the District Judge.

In revising the District Court Order, their Lordships held that it is basic law that the Defendant in an action must be served with a copy of the Plaint filed by a Plaintiff and given an opportunity of answering the claim.

When a Defendant makes a claim-in-reconvention in his answer to the extent of that claim, the answer is treated like a Plaint and must be served on the party against whom the claim in re-convention is made and given an opportunity to answer such clam in re-convention.

INJUNCTION

Ref: BASL/04/08/2002

***Injunction** – Interim relief* - scope of an inquiry for interim relief, discussed.

Karunaratne Vs Lissie & 07 Others

CA/LA/284/2000
D.C.Moratuwa No.3587/L

Decided by **UDALAGAMA, J.** and **NANAYAKKA, J.** on 04th October, 2001

The Plaintiffs-Respondents filed action in the D.C. for restoration of possession of a land on the basis that by an allegedly collusive action the Plaintiffs-Respondents were ejected therefrom. The Plaintiffs-Respondents also moved for interim relief by way of an enjoining Order and interim injunction restraining the Defendant-Petitioner from alienating the land or causing damage to it by felling trees. The learned District judge issued an interim injunction restraining the 1st Defendant-Petitioner from alienating the said land, and from felling trees. It was the finding of the learned District Judge that the Plaintiff in the said action appeared to have had a prima facie case and proceeded to grant interim relief as prayed for till the final determination of the action.

Their Lordships held that an Order pertaining to an application for interim relief is not a determination of the substantial merits of the case. The scope of an inquiry for interim relief is limited. One prime objective being to ensure that the final judgement would not be rendered nugatory. As the learned District Judge had come to a finding that the Plaintiffs appeared to have had a prima facie case, the issue of an interim injunction was proper to maintain the status quo.

CHP LAW

Ref: BASL/05/08/2002

***Ceiling on Housing Property Law** – Right of tenant to purchase the tenanted house – Nature of the tenant's rights – Point at which character of tenant's rights change, analysed.*

Cassim Vs Weerawardena & Another

SC.Appeal NO. 72/2001
SC/SPL/LA/155/2001
CA(Rev) No. 897/2000

Decided by **FERNANDO, J., WADUGODAPITIYA, J. & ISMAIL, J.** on 14th May, 2002

The Appellant was the widow of Mr.Cassim who had purchased the property in 1968. The 2nd Respondent and her husband had occupied the premises since their marriage in 1954. The 2nd Respondent's husband had made an application as the tenant to purchase the house under the CHP Law. After the usual legal formalities the house was vested in the Commissioner and the tenant was required to deposit the sum, as valued by the Valuation Board. However, the tenant died before the communication of the valuation, and the widow indicated her willingness to make the payment to purchase the house. In the meantime, the Commissioner, in view of the decision in *Leelawathie v Ratnayake*, took steps to divest the premises. On an application made by the widow, the Court of Appeal quashed the decision of the Commissioner to divest the premises. The Supreme Court, on this appeal by the owner of the premises, upheld the decision of the Court of Appeal.

LABOUR TRIBUNAL

Ref: BASL/06/08/2002

***Labour Tribunal** – 'Casual employee' and "permanent employee', distinguished*

Bandara Vs State Engineering Corporation

SC(Appeal) No. 57/2001, SC(Spl) LA/133/2001, HC/LT/1709/99, LT/2/170/95

Decided by **SILVA, J, BANDARANAYAKE, J. & WIGNESWARAN, J.** on 16.9. 2002.

The Appellant, a B.Sc graduate Engineer was, prior to his graduation, recruited as a trainee engineer, and after graduation, the Appellant claimed that he was recruited as an Engineer. The Appellant was initially assigned to a construction site and thereafter his services were terminated on the ground that his services were no longer required. The Appellant's application for reinstatement was allowed by the Labour Tribunal, but the High Court reversed the order of the LT on an appeal by the Respondent. In this appeal by the Applicant, the Supreme Court analysed the nature of the evidence pertaining to the absence of a Letter of Appointment, the calculation of payment on a daily basis, the 'nature' and 'character' of the Appellant's employment to distinguish between a 'casual worker' and a 'permanent employee', to invoke the jurisdiction of the ID Act.

RAPE

Ref: BASL/07/08/2002

***Rape** – Defences - Difference between consent and submission to sexual intercourse, analysed –Corroboration of evidence of prosecutrix when material, discussed – Principles of considering evidence of prosecutrix, examined.*

Gallage Vs Kamal Addaraarachchi & A.G.

SC/LA No. 30/2001, CA/90/97, HC/Colombo/7710/96

Decided by **SILVA,C.J., BANDARANAYAKE, J. & J.A.N.DE SILVA, J.** on 30.05.2002.

A Special Leave to Appeal application was filed by the Prosecutrix in a rape case against the decision of the Court of Appeal acquitting the Accused-Appellant-Respondent. The Accused was indicted in the High Court on two counts, one for abduction and the other for committing rape – offences punishable under Sections 357 and 364 of the Penal Code, respectively. After a trial without a jury, the Accused was convicted by the learned High Court Judge on both counts. In appeal, the court of Appeal set aside the conviction and the sentence and acquitted the Accused. The Attorney-General did not challenge the Judgement of the Court of Appeal. However, the Prosecutrix sought special leave to appeal against the said acquittal. In dismissing the application for Special Leave, their Lordships examined closely the questions of the difference between consent and submission to sexual intercourse, when corroboration of the evidence of the Prosecutrix becomes material and the principles on which the evidence of Prosecutrix should be considered.