Stare decisis

COURT OF APPEAL

REVISION

Ref: 01/01/2004 Rs. 50.00

Revision *– Necessity to aver exceptional circumstances, discussed – Failure to set out any averment to indicate the existence of exceptional circumstances fatal to application for revision.*

Malawaraarachchi, et al Vs. Emalihamy, Et Al

C.A.Application No. 1452/2000
D.C.Walasmulla No. P/336

Decided by GAMINI AMARATUNGA, J. & JAGATH BALAPATABENDI, J. on 14th November, 2002.

A preliminary objection was raised by the Defendants-Respondents tha there was no exceptional circumstances averred in the Petition to invoke the revisionary jurisdiction of the Court of Appeal. Their Lordships held that failure to comply with an established important legal principle was fatal to the Application for Revision.

Application dismissed with costs.

COURT OF APPEAL

ISSUES

Ref: 02/01/2004 Rs. 40.00

ISSUES *– Civil Procedure Code Section 150 – Raising issues during trial – Issues need not be confined to pleadings –Effect and importance of explanation 2 of CPC Section 150, explained.*

Lingarasa Vs. Dr.Somasegarampillai & Another

C.A/L A No. 365/2001
D.C.Colombo Case No. 18063/L

Decided by UDALAGAMA, J. & NANAYAKKARA, J. on 02nd December, 2002

In an action for declaration of title to a property, the Defendant-Petitioner filed Answer in which, apart from seeking the dismissal of the action made a counter claim vindicating possession and ownership to the property in suit. During the re-examination of the Plaintiff-Respondent's witness the Defendant-Petitioner sought to raise three fresh issues, which were disallowed by Court on the objection of the Plaintiff-Respondent. When leave was sought against the impugned Order, their Lordships held that though it was permissible to raise issues during the course of a trial, it should not be materially different from that which is before Court. Citing precedent, their Lordships agreed that issues are not to be framed solely by reference to the pleadings although, of course, the pleadings continue to be relevant because Section 150 of the CPC explanation requires that the case presented by a party must reasonably accord with its pleadings. Their Lordships observed that the general proposition that issues need not be restricted to pleadings has not in any way whittled down the effect and importance of the Explanation 2 in CPC Section 150.

Application dismissed with costs.

COURT OF APPEAL

WRITS OF MANDAMUS & PROHIBITION

Ref: 03/01/2004 Rs. 80.00

WRITS OF MANDAMUS & PROHIBITION *– Right to resign from employment whilst disciplinary inquiry pending – Status of employee on resignation before completion of disciplinary inquiry – Interpretation of employer's disciplinary code*

Ramanayake Vs. The Mahaweli Authority of Sri Lanka & Another

C.A. No. 770/2001 (Writ)

Decided by SHIRANEE TILAKAWARDANE, J. & WIJEYARATNE, J. on 20th November, 2002

The Petitioner who was the Chief Works Engineer of the Mahaweli Authority sought a Writ of Mandamus directing the Respondents to release him on no-pay leave or to accept his resignation. He also sought a Writ of Prohibition to prevent the Respondents from making any order to prevent his release to enable him to accept appointment in another project. The Court on examining the employer's Disciplinary Code found that if an employee resigns before the proceedings have been completed and before the disciplinary order is made, he will be deemed to have been dismissed. If the employee resigns when a disciplinary action is pending, he would be deemed to have vacated his post. Taking these matters into consideration the Court ruled that there was no merit in the Applications.

Application dismissed with costs.

Stare decisis

COURT OF APPEAL

LEAVE TO APPEAL

Ref: 04/01/2004 Rs. 40.00

LEAVE TO APPEAL *– Conversion of Application for Leave to Revision when allowed, discussed – Revisionary powers of Court, examined – Nullity of partition decree which allots share to a deceased party – Remedy of rectifying invalid decrees even though affirmed in appeal, revealed*

Anson Silva Vs.
Chandrasiri De Silva & Another
D.C.Balapitiya
Case No. 1454/P
C.A/L A No. 352/2001.

Decided by GAMINI AMARATUNGA,J. & JAGATH BALAPATABENDI, J. on 03rd October, 2002

An interlocutory decree was entered in a Partition action without any contest. Three years later when the Final Scheme of partition was due the Petitioner sought to set aside the judgment and the interlocutory decree on the bvasis that at the time of the institution of the Partition action his Mother who had been named a Defendant was dead. The Petitioner sought leave to appeal against the Order of the District Court refusing his application for substitution. He had also filed a Notice of Appeal against the impugned Order. Their Lordships examined when such substitution could be made, and also discussed the powers of Revision of the Appellate Courts, and how the Court could act in Revision in a Leave to Appeal Application.

Leave refused.

COURT OF APPEAL

WRIT OF CERTIORARI & MANDAMUS

Ref: 05/01/2004 Rs. 25.00

WRIT OF CERTIORARI & MANDAMUS *– Customs Ordinance – forfeiture of goods – Writ jurisdiction when goods "forfeited" or "liable to forfeiture", examined – failure to name officer responsible for forfeiture, fatal to application.*

Gurjeet Singh Bambra Vs.
Director General of Customs, et al

C.A No. 720/2002

Decided by SHIRANEE TILAKAWARDANE, J. & WIJAYARATNE, J. on 10th December, 2002

On detecting undeclared jewellary in the baggage of the Petitioner, a sailor, at the Port of Galle the goods were seized by a Customs Officer, which were subsequently forfeited by the Customs after an inquiry. The Petitioner moved for a Writ of Certiorari to quash the decision of the Customs to forfeit the goods and Mandamus for their release. The Writ jurisdiction of Court was challenged by the State on the ground that the goods had already been forfeited as opposed to 'liable to forfeiture'. The Court held with the State on the question of jurisdiction, and also held that as the forfeiting Officer had not been made a party, it was fatal to the Application for Writ.

Application refused

George Graham Vest

[1830 – 1904]

George Graham Vest, United States Senator from Missouri from 1879 to 1903, was one of the leading orators and debaters of the Senate. As a young man practicing law in a small Missouri town, Vest represented a man who sued another for the killing of his dog. Vest displayed no interest in the testimony, but when his turn came to address the jury, he made the following speech – and won the case.

In a Laundromat:
AUTOMATIC WASHING MACHINES: PLEASE REMOVE ALL YOUR CLOTHES WHEN THE LIGHT GOES OUT

Obituaries

We deeply regret to announce the demise of the following, and convey our deepest sympathies to their respective families:

Mr. Tissa Goonaratne, PC, Mr. E. S. Harichandra, Mr. K. Balasinghe, Mr. Palitha Liyanage, Mr. Rohan de Silva, Mr. Chandra de Silva, Mr. Neel de Abrew, Mr. P. Hetige Karunarathe, Mr. Hurbert E. Weerasuriya

FOUND

1. Black dialed Ladies Wrist Watch with gold strap.
2. Brown coloured spectacle case

At the Colombo Polling Booth during the BASL Elections.
Contact - BASL Secretariat.