

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

Suduweli Kondege Jinadasa  
Dharmawardena of  
Walpola, Matara.

**Defendant-Appellant.**

C.A No: 27/1993 (F)  
D.C No: 2987/M

Vs.  
Srinath Kumar Karunanayake of  
Jasan Flats, No: 32/1  
Sri Saranankara Road, Dehiwala.

**Plaintiff-Respondent.**

Before	:	Rohini Marasinghe J.
Counsel	:	Rohan Sahabandu for the Defendant- Appellant.  S.L.K. Dahanayake for the Substituted Plaintiff- Respondent.
Written Submissions on :		24.06.2011 (Plaintiff – Respondent) 08.02.2012 ( Defendant-Appellant)
Argued on	:	11.10.2010.
Judgment on	:	26.04.2012.

The original plaintiff was one Kumaradasa Karunayake hereinafter referred to as KK was the son of one Jeramias and Sudharma Karunanayake. The business called "Oriental Stores" belonged to this family. After the death of the parents, KK became the sole licensee of the right to sell foreign liquor which was the main business at 'Oriental Stores'. In his testimony KK alleged that in the year 1964, the business was suffering a financial loss and that KK was also of poor health. At that point KK had decided to include the defendant named Helenis Singho hereinafter referred as HS as a co licensee in the liquor license. Consequently an agreement was signed between the two of them which was marked as P2. The agreement was dated 1.9.1964. As per the regulations under the Excise Ordinance a letter was written to the Commissioner of Excise informing of this agreement. The said letter was marked as P1. After the agreement was signed by which HS became a

partner of the half share of the liquor license, the name of the business was changed to "New Oriental Stores".

The central issue in this case could be considered as issue No 3. The issue No 3 reads as follows;

'Was the said document marked as X obtained by the defendat from the plaintiff-

- (a) by false pretences, and or
- (b) when the plaintiff had been reduced to a state of intoxication by the defendant, and or
- (c) When the plaintiff was unable to comprehend the nature of the document which he had signed.

The other issues are dependant on the answer to this issue. The impugned document was marked as P10. The document P 10 reads as follows;

“ Kumaradasa Estate,  
Horagoda,  
Telijjawila.  
30<sup>th</sup> January, 1968

The Excise Commissioner,  
Colombo.

Dear Sir,

Foreign Liquor License- Kotuwegoda, Matara.

I wish to address you in the following circumstances.

The above license is issued in the name of Mr. S.K. Helenis Singho of Kotuwegoda, Matara and myself. The business is being carried on at New Oriental Stores, Kotuwegoda., Matara.

As I have been ailing for the last number of years, I am no longer in a position to continue as a co- licensee in respect of this license. I shall, therefore, thank you to delete my name from the license and allow only Mr. S.K. Helenis Singho's name to stand as the sole licensee.

Yours faithfully

Kumaradasa Karunayaka.

Copy to- Government Agent, Matara.”

In the evidence KK testified that at the time of the agreement the business had a debt owing to the Ceylon Brewery Ltd for a sum of Rupees

11,231/75. As a result of the Agreement, KK was to get rupees 500 per month. But the money was to be paid only after the debt to the Brewery was settled. As contended by KK a sum of rupees 500 was deducted every month in order to pay the Brewery Ltd. After the debt was settled KK had received rupees 500 every month. According to the evidence of Kk the partnership was carried on in this manner until January 1968. On a day in January 1968, KK testified that he went to the house of HS. At the house KK had been given Beer and whiskey. According to the testimony of KK at the time he was to leave the house of HS, three letters had been given by HS to be signed by KK out of which one was the impugned document P 10. As stated in evidence KK had not read the contents of the letter as KK was not in a proper state of mind to comprehend any thing due to intoxication.

According to the testimony of KK, the letters were to inform the Commissioner that the liquor shop would be closed on the 9<sup>th</sup> of February for the wedding of HS's daughter. Such a notice was a requirement under the Excise Ordinance.

In April 1968, KK had seen his name being deleted from the name board of the shop. Upon inquiry he was informed by the Government Agent about the transfer mentioned in P 10. As a result of P 10 the liquor license was now only in the name of HS. The letter sent by the G.A was marked as P8.

In order to answer the central issue the trial judge was required to consider the attending factors surrounding the execution of P10. In order to reach this point the trial judge had dealt with several facts and circumstances which tend to show that the letter P 10 was not the act and deed of a man capable of understanding the nature of the document at the time it was executed. One such matter was that KK was not given any money for surrendering or for the sale of his half share in the license. The other factor was the advantage that obtained by the defendant as a result of this impugned document. The document P 34 was rejected by court. The defendant by that document P 34

attempted to show that a certain sum of money was paid to KK but this position was rejected by court.

The plaintiff whom I have referred as KK had given evidence at length. He had given evidence on 24-5-1973, 12-01-1981, 3-3-1982, and 16-3-1982. He had also been cross examined at length. In his testimony he had categorically stated that he had no intention of surrendering or selling his share of the business. His position throughout the trial was that he was under the influence of liquor and was unable to comprehend the impugned letter surreptitiously put before him by HS.

The question whether KK was under the influence of liquor as a result of which he could not comprehend the nature of his act was a question of fact. But an important qualification is to be noted. If the defendant was able to prove that notwithstanding the fact that KK was drunk, KK was able to

understand the nature of the document and its legal implications the fact of his intoxication would not have affected his consent. In that event KK would have been held as having acted with knowledge and capacity to do what he did. Then the over indulgence of liquor would have not been any excuse for KK to plead in this case. KK alleged that he got drunk by the liquor served by HS at the house of HS, and whilst in that condition that he signed the impugned document not knowing the true contents of the document. The defendant did not attempt to prove that the plaintiff acted voluntarily, knowing the implications of the impugned document. The court was possessed only with the evidence of the plaintiff and his witnesses. That evidence had been accepted by the trial judge.

The learned trial judge had been satisfied with the evidence of KK. The appellant failed to show to this court the areas where the trial judge had misdirected himself or misunderstood any material fact which had resulted in reaching the conclusion mentioned in the impugned judgment. I have examined the evidence led at the trial. The plaintiff and two other official

witnesses had given evidence for the case of the plaintiff. I am also in agreement with the trial judge that the evidence of the plaintiff had clearly and unequivocally proved the central issue in this case to enable the learned trial judge to answer that issue in favour of the plaintiff. I may end this judgment with a passage quoted from the case of *Alwis v Piyasena Fernando*. ((1993) 1 SLR p 119 at p 122.) This case refers to the in which the court of Appeal should deal when the appeal is dependant on questions fact.

“It is well established that findings of primary facts by a trial judge who hears and sees witnesses are not be lightly disturbed on appeal”

In general the Courts in appeal may not interfere with the trial judges’ finding of facts unless it is shown that mistake of fact was such that it has resulted in the decision being irrational or against the evidence. I see no

reason to interfere with the decision of the trial judge on the questions of fact dealt in the trial.

The appeal is dismissed.

Rohini Marasinghe J.

Judge of the Court of Appeal.