

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

CA 403/99 F

DC Colombo-8483 MPH

Sandhya Kanthi Ratnaweera,

82/1, Galmaduwa Road,

Kundasale

**1<sup>ST</sup> DEFENDANT APPELLANT**

Vs.

Mercantile Credit Private Limited,

55, Janadhipathi Mawatha,

Colombo -1

**PLAINTIFF-RESPONDENT**

Subramaniam Palanisamy,

Radha Textiles,

58, Colombo Street,

Kandy.

**1<sup>ST</sup> DEFENDANT-RESPONDENT**

**AND ANOTHER**

Before: AWA Salam, J

Counsel : D H Siriwardena with Sarath Weerakoon for the 1<sup>st</sup> defendant-appellant.

Argued on: 14.11 2012

Decided on : 16.1.2013

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A W A SALAM, J

This appeal arises from the judgment of the district court of Colombo delivered in a suit concerning a hire purchase agreement. The plaintiff-respondent entered into a hire purchase agreement with the first defendant-appellant and the 2<sup>nd</sup> and 3<sup>rd</sup> defendant-respondents are the guarantors of the said agreement of hire purchase entered into between the plaintiff-respondent and the first defendant-appellant.

The hire purchase agreement entered into between the main parties was produced at the trial marked as P2. By the said agreement the 1<sup>st</sup> defendant-appellant took on hire from the plaintiff-respondent a vehicle upon the initial payment of Rs.35/- and on the undertaking that he would pay the monthly rental thereafter every month as agreed in terms of the hire purchase agreement. The 2<sup>nd</sup> and 3<sup>rd</sup> defendant-respondents guaranteed the said payment and further undertook to pay the same by themselves in the event of the 1<sup>st</sup> defendant-appellant making default of the payments has undertaken by him.

The 1<sup>st</sup> defendant-appellant having defaulted to pay the rentals has agreed, the plaintiff-respondent had terminated the hire purchase agreement and sued all three defendants in the same action. At the

conclusion of the trial the learned district judge held inter alia that the plaintiff is entitled to succeed in his action against all three defendants.

The main defence was that the hire purchase agreement in question had been signed in Kandy and therefore, the court had no jurisdiction to entertain the plaint as the agreement sought to be enforced was made outside the jurisdiction of the district court of Colombo. The learned trial judge having carefully considered the evidence answered the issues relating to the jurisdiction in favour of the plaintiff. He rejected the contention that the agreement had been signed in Kandy. It is quite evident from the agreement subscribed to by all three defendants that it had been signed in Kandy.

The other question raised in the appeal was that the judgment is not in conformity with Section 187 of the Civil Procedure Code. On a reading of the judgment, I am not inclined to accept the argument that the judgment is contrary to Section 187 of the Civil Procedure Code.

For the above reasons, the appeal preferred by the 1<sup>st</sup> defendant-appellant stands dismissed subject to costs.

Judge of the Court of Appeal

NR/-