

Civil Jurisdiction

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In our legal system the administration of justice forms part of two branches of law, namely the substantive law and the procedural law. Substantive law consists of statutory laws as well as the common law which had been conventionally followed by our courts for a considerable length of time. Inveterate practices adopted by courts also have been integrated into the component of the procedural law. Our court system has evolved during the period of over last two centuries whereas our Supreme Court was established by a Proclamation dated 14th October 1799. Rest of the courts derived their jurisdiction from various Proclamations, Rules, Regulations, Ordinances, Laws and Acts enacted from time to time. Courts Ordinance had empowered the jurisdiction on the other courts before the enactment of the 1978 Constitution and the Judicature Act.

Superior Courts, the Supreme Court and Court of Appeal have derived their jurisdiction from the Constitution to entertain and adjudicate disputes relating to the matters set out in Chapter XVI of the Constitution. Procedural aspect of the superior courts is further supplemented by the Rules adopted by the Supreme Court exercising the powers vested in it by Article 136 of the Constitution.

Jurisdiction of the Original Courts, which consist of High Court, District Court/Family Court and Magistrate Court is derived from the Judicature Act No. 02 of 1978. Although the High Court was established as an original court to exercise



criminal jurisdiction, after the enactment of the 13th Amendment to the Constitution, and establishment of Provincial High Court, now powers of the original civil jurisdiction as well as appellate jurisdiction of both the civil and criminal jurisdiction are exercised by the Provincial High Courts.

At present, original civil jurisdiction is exercised by two courts;

a) District Court and

b) Provincial High Court (Civil)

Civil Jurisdiction vested in the District Court is defined and described in Chapter IV of the Judicature Act as follows.

Section 19; “Every District Court shall be a court of record and shall within its district have unlimited original jurisdiction in all civil, revenue, trust, matrimonial, insolvency and testamentary matters save and except such also have the jurisdiction over the persons of unsound mind, minors and wards, over the estates of cocestuis que trust and over guardians and trustees and in any other matter in which jurisdiction is given to District Courts by law.”

Section 19A. “Every District Court shall have cognizance of and full power to hear and determine all pleas, suits, actions in which a party defendant shall be resident within the district in which any such suit or action shall be brought or in which the cause of action shall have arisen within such district or where the land in respect of which the action is brought lies or situate wholly or partly within such district or the contract sought to be enforced was made within such district.

Section 20 (1) of the Act deals with regards to the jurisdiction over care and custody of the persons of all idiots and persons of unsound mind while section 21 deals with the jurisdiction over testamentary matters.

Although the District Court derives its jurisdiction from the substantive law enumerated in the Judicature Act, it is incumbent upon litigants to adhere to the procedural laws enunciated in the Civil Procedure Code. Every litigant who intends to invoke the jurisdiction of a court, based on a cause of action accrued to him in seeking remedies under the civil law is obliged to ascertain the jurisdiction of the court in which the proposed action to be filed. There are several limitations as well as descriptions in the definition of the causes of action upon which the subject of dispute are adjudicated. Sometimes such limitations and definitions are incorporated in the statutes themselves under difference circumstances. In such instances, there won't be any ambiguity or uncertainty in deciding where the jurisdiction lies. In the absence of specific provisions been made, one should resort to section 9 of the Civil Procedure Code in which certain limitations are prescribed based on different criteria including pecuniary limitations.

Section 9 stipulates local limits of jurisdiction under four categories. On the face of them, it appears that section deals with patent want of jurisdictions. There are instances where the court has examined the principle of latent want of jurisdiction too in entertaining actions. The four categories refer to in section 9 are as follows;

“Subject to the pecuniary or other limitations prescribed by any law, action shall be instituted in the court within the local limits of whose jurisdiction;

a) a party defendant resides; or

b) the land in respect of which the action is brought lies or is situate in whole or in part; or

c) the cause of action arises; or

d) the contract sought to be enforced was made.

The plain reading of section 9 cited above gives a clear indication that it has been drafted in commensuration with the abovementioned provisions of the Judicature Act.

a) (i) Where the party defendant resides

It is a general principle that any plaintiff can sue a person (defendant) against whom the alleged cause of action arose within the jurisdiction in which he resides. The residence is decided based on the domicile of the party concerned. The domicile has been defined as the place where one has his family establishment and home.

By a C.I.F contract the defendants, who are merchants domiciled and residents and carrying on business in England, sold certain goods to the plaintiffs, merchants residents and carrying on business in Ceylon. The goods not having been received by the plaintiffs sued the defendants in the District Court of Colombo for damages for non-delivery of goods. Court held that the District Court of Colombo had no jurisdiction.

Where a person resident in one country has his domicile in another country, a judgement passed against him in absentia cannot be enforced in the country of his domicile.

Under the English law the principle adopted is that the debtor must seek out the creditor applies. In such a case the cause of action i.e. the failure to pay arises where the claimant resides.

But it must be noted though the English law has adopted the principle “the debtor must seek out the creditor” the Roman-Dutch law has followed the principle that the “Creditor must seek out the debtor”. It is obvious that the principle enunciated in Section 9(a) is similar to that of the Roman Dutch principle.

ii) When there is more than one defendant

When there is more than one defendant action could be instituted in the District Court within which anyone of them or few of them reside.

b) Where the land is situated.

If there is an action which proposes to adjudicate a dispute relating to a land/any immovable property, it must be instituted within the local limits of the jurisdiction where such property is situated. Where the defendant sold a land situated in Kegalle and the deed was executed in Colombo, but failed to deliver vacant possession to the purchaser, the cause of action to recover possession arose in Kegalle and District Court of Kegalle had the jurisdiction to hear and determine the action.

An action for the redemption of a mortgage could be filed in the district within which the land is situated.

An action for specific performance of an agreement to sell a land is not an action caught up in section 9 (b) of the Civil Procedure Code. Action could be filed either in the district court where the land is situated or in the district court where the contract sought to be enforced was entered into.

c). Where the cause of action arose

Under the Roman-Dutch law, a creditor is obliged to seek out the debtor. An action on account the applicable law is the Roman-Dutch law and accordingly the creditor must seek out the debtor.

d). The contract sought to be enforced was made

Where the parties entered into a contract at Colombo with the agreement that it should be enforced in Kandy. On breach of the contract, action could be filed in the District Court of



Kandy. The plaintiff who was a resident in Galle entered in to an agreement with the defendant who was resident in India and temporarily resident at Galle. On breach of the contract, the District Court Galle had the jurisdiction to hear and determine the matter.

Partition Action

Where any land belongs in common to two or more owners, anyone or more of them may institute action for the partition or sale of the land in terms of section 2 of Partition Law No. 21 of 1977. Such an action shall be instituted in the District Court, within the local limits of whose jurisdiction of the land (subject matter) is situated in whole or in part (section 3(1)). In the event their exist an uncertainty with regard to the local limit of jurisdiction of which of two or more courts any land is situate, action can be entertained and proceeded after recording such fact.

Testamentary Proceedings

Testamentary proceedings are governed by Chapter XXXVIII of the Civil Procedure Code. An estate of a deceased may either be of testate or intestate. If it is a testate estate, which means the person who died by leaving a last will, the person who is nominated as the executor could institute a testamentary action in the District Court of the district within which,

he resides; or

the testator resided at the time of his death; or

any land belong to the testator's estate is situated.

If a person dies without leaving a will or where the will cannot be found and leaving an estate to be administered through the court a testamentary action could be filed by any person

interested or any heir in the district court within which,

the applicant resides; or

the deceased resided at the time of death; or

any land belonging to estate of the deceased is situated.

Section 525 has made compulsory to file a testamentary action in respect of an estate of a person who died without leaving a will provided that he has left property in Sri Lanka amounting to or exceeding in the value of Rupees 4 million, within one month of the date of death of such deceased. If a person dies while leaving a will action to be filed within 3 months after finding the will.

Such time period is not mandatory if the delay could be satisfactorily explained.

Matrimonial Action

Chapter XLII of the C.P.C has dealt with regard to the procedure for divorce a vinculo matrimonii or for separation a mensa et thoro or for declaration of nullity of marriage. Any husband or wife may from a plaint filed in the district court within the local limits of jurisdiction of he or she resides, may pray for a resolution of the marriage.

Although the section refers to the jurisdiction in which the plaintiff resides, there had been, certain confusion as to how the residence of a person to be determine under the Roman-Dutch law. When a woman marries to a man she automatically assumes to her husband's nationality and in certain jurisdictions the women becomes eligible to obtain the nationality of her husband after fulfilling the required criteria.

In Navarathnam Vs. Navarathnam, the plaintiff, who was of Sri Lankan domicile, sued the defendant, who until her marriage had an Indian domicile, for a declaration that the

marriage solemnized between them in 1936, was null and void on the ground that the defendant had a child birth about 3 months after the marriage and that the plaintiff was unaware that the defendant was pregnant and that the plaintiff before the marriage never had access to the defendant. The marriage took place in India and the defendant remained in India and never came to Sri Lanka. Action was instituted in a District Court of Jaffna in 1943.

Court held that Sri Lankan court had jurisdiction as the marriage which was voidable and not void in the nature, should be regarded as good until a decree for nullity was entered, and the domicile of the wife should be regarded as the domicile of the husband up to the date of decree.

In *Waruna Jayasooriya Vs. Hishanthi Jayasooriya*, Wimalachandra J. decided that a wife acquires domicile of the husband up to the date of decree in the matrimonial action. What domicile is applicable to a party in a matrimonial action is a question of law interwoven with questions of fact, the issue cannot and ought not to be tried as a preliminary issue.

Action relating to minors.

Section 582 of C.P.C provides that any person who shall claim a right to have charge of property in trust for a minor, under a will or deed or by reason of nearness of kin or otherwise should apply to the district court for a certificate of curatorship. A district court has no power to appoint a curator over the estate of a minor who is not residence within the jurisdiction even though the minor may be entitled to property situate within it's jurisdiction.

Actions relating to persons of unsound mind

Chapter XXXIX of the C.P.C has provided the procedure in relation to applications regarding the persons of unsound mind. Any application for determination as to whether a person is of unsound mind or not and for the appointment of

a manager or a guardian of the person found to be unsound mind shall be made under summary procedure to the district court within which such person is residing.

Action by and against corporation and companies.

Chapter XXXIII of the C.P.C has dealt with regard to action by or against incorporated bodies and companies. Categories of companies are defined in 3 of the Companies Act No. 07 of 2007. If an action to be filed against an incorporated body or a company registered under the companies Act, it could be filed within the jurisdiction of the District Court where the registered address of such body is situated or where the principal place of business is situated. Service of summons could be made by leaving it at the registered address of such institution or by delivering to the secretary or a principal officer thereof.

Actions against the State.

Chapter XXXI of the C.P.C provides the procedure in relation to filing of actions against the State, ministers and public officers. All such actions against the State shall be instituted against the Attorney-General. Section 461 of the C.P.C has imposed a pre-condition that one-month notice shall be given to the Attorney-General before filing of any such action.

A public officer who does an illegal and mala fide in the pretended exercise of statutory powers cannot be set to be "purporting" to act under statute which confers those rights within the meaning of this section and is therefore not entitled to the notice of action provided for by this action.

Claims to property seized.

As provided in section 241 of C.P.C in the event of any claim been preferred to or objection offered against seizure or sale of any immovable or movable property which may have been seized in execution of a decree, but not liable to



be sold the Fiscal shall soon thereafter, report the same to the court which has passed the decree. If such property is seized by a Fiscal of a court other than that of the court which passed the decree, an inquiry under summary procedure shall be held by the District Court within which such seizure took place. If such claim is rejected, the aggrieved party is entitled to institute a regular action within 14 days from the date of the order to establish his entitlement to the property in dispute.

Unsuccessful claimant filed an action under section 247 of C.P.C in the District Court of Negombo, as the execution was issued by that court. But the property seized was situated in Kurunegala. Negombo Court has no jurisdiction as the cause of action is not on the seizure but on the violation of the right of ownership. It is competent for the Negombo Court to return the plaint to be presented to the proper court.

State Land, (Recovery of Possession) Act

Act No. 7 of 1979 has provided the procedure for ejectment of any person who is in occupation of a State land without any authority. If the occupant cannot establish that he has a valid permit or other written authority granted by the State, the Magistrate is bound to issue an order under the summary procedure to eject such occupant. But if such occupant takes up the position that he is the owner of the land in dispute, he is entitled to institute an action against the State for the vindication of his title thereto within 6 months from the date of the order ejectment.

Commercial High Court

Although the unlimited powers in relation to every civil matter was vested in the District Court until the 13th Amendment to the Constitution was adopted, Article 154(P) of the Constitution has empowered the Provincial High Court to exercise original civil jurisdiction as well as appellate and revisionary powers which were earlier

vested in the Court of Appeal. Accordingly, High Court of Provinces (Special Provisions) Act No. 10 of 1996 was enacted in May, 1996. Section 2 thereof has provided to entertain actions in relation to dispute which has arisen as a result of commercial transactions. In addition to that certain cases under the Companies Act, Code of Intellectual Property Act, Securities and Exchange Commission Act, Fair Trading Commission Act also could be instituted in such High Court commonly called as Commercial High Court.

One of the significant features that has provided in section 9 thereof is that in the event of any such action been filed in the District Court, the District Judge empowered to record such fact and order that such action shall stand removed to the appropriate court. (transfer to the Commercial High Court).

Section 47 of the C.P.C also provides that in every case where an action has been instituted in a court not having jurisdiction by reason of the amount or value involved or by reason of the conditions made necessary to the institution of an action in any particular courts by section 9 not been present, the plaint shall be returned to be presented to the proper court.

Where an action was dismissed on the ground that the court had no jurisdiction and an application was made to the Supreme Court in appeal that the plaint should be returned to the plaintiff to be filed in the proper court. Supreme Court held that it would not entertain the appeal at that stage of the action. The order which is made upon a plea to jurisdiction made and upheld by the court is almost invariably an order dismissing the action.

Cause of Action

Every such action must be based upon a cause of action. It means that the particular act on the part of the defendant gives the plaintiff his cause of complaint.

The expression of ‘cause of action’ generally imparts two things, viz, right in the plaintiff and violation of it by the defendant, and cause of action means the whole cause of action i.e. all the fact which together constitute the plaintiff’s right to maintain the action, or, it has been otherwise put, the media upon which the plaintiff asks the court to arrive at a conclusion in his favour.

Failure to perform contract is a ‘wrong’ within the meaning of expression ‘cause of action’.

The wrong includes a threatened wrong which means that, there is a possibility of anticipation of infringement of a rights of a person.

Any neglect of duty, refusal to fulfil an obligation and denial of right also do fall within the definition of cause of action.

Scope of Cause of Action

As provided in section 33 of C.P.C, every regular action shall, as far as practicable be so framed as to afford ground for a final decision upon the subject in dispute, so to prevent further litigation concerning them.

Where plaintiff brings an action for a land, he must under section 33, set-out every title by which he claims to be entitled to it at the time of the action. Where he omits to plead any title on which he might have relied in one action, he is debarred from setting up such title in a subsequent action.

Section 34 demands that every action shall include the whole of the claim which the plaintiff entitled in respect of the cause of action he set-out. If he omits or relinquish any right or entitlement based on the same cause of action, he will be debarred from filing a fresh action on the same subsequently. This is on the basis of the legal principle of res judicata incorporated into sections 34 and 207 of the C.P.C.

Procedure

As provided in section 8 of C.P.C, save and except in which it is by C.P.C or any other law specially provided that proceedings may be taken by of summary procedure, every action shall commence and proceed by a course of regular procedure.

Averments on Jurisdiction

Section 45 of the Code reads as mandatory that every plaint shall contain a statement of facts setting out the jurisdiction of the court to try and determine the claim in respect of which the action is brought.

Where the plaint did not allege anything on the face of it, it gave the jurisdiction and the court by an oversight omitted to notice the defect and accepted the plaint, and the attention of the court is called to the point by the defendant, the court ought either to reject the plaint or to return it to the plaintiff for amendment.

Objection to the Jurisdiction

Section 39 of the Judicature Act provides that if any defendant or accused intends to raise an objection on the jurisdiction, he must do so at the earliest opportunity and thereafter he will be barred or estopped from raising such objection.

Similarly, section 76 of the C.P.C. also provides that if a defendant intends to dispute the averments in the plaint as to the jurisdiction of the court, he must do so by a separate and distinct plea, expressly traversing such averments.

In certain cases, the question of jurisdiction could be observed as matter of patent want of jurisdiction, but in certain cases it could be observed only as latent want of jurisdiction. At times the jurisdiction is a matter of pure question of law and in others it is a matter of a mixed question of law and question of facts.

Section 44 of the Code provides that if the cause of action arose beyond the period



ordinarily allowed by any law for instituting the action, the plaintiff must show the ground upon which the exemption from such law is claimed.

In the case of *Kandy omnibus Co. Ltd Vs. Roberts*, Sansoni J, held that;

“It is not open to a person to confer jurisdiction by consent and no amount of acquiescence confers jurisdiction upon a tribunal or court where such jurisdiction did not exist.”

Sansoni J, further held that;

“As this was a case of total want of jurisdiction and not a case of irregularity or want of contingent jurisdiction, the fact that the petitioner had waved objection to the jurisdiction of the tribunal and taken part in the proceedings thereafter could not disentitle him, despite his acquiescence, to object later that the order made by the tribunal was void.”

The principle of patent want of jurisdiction and latent want of jurisdiction was discussed by A.H.M.D. Navaz J in the recent case of *Rasheed Vs. Isfahan* and others.

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