

A **RASULAN**

v.

SHER ALI KHAN

[SUPREME COURT, 1962 (Hammett Ag. C. J.), 12th January, 2nd
B February]

Appellate Jurisdiction

Practice and procedure — pleading — order for filing of statement of defence — no defence filed in fact — allegations of fact in statement of claim taken as established — Magistrates' Courts Rules (Cap. 5) 0.16 r.3.

C *Evidence and proof — allegations of fact in statement of claim — taken as established at hearing when order for filing statement of defence not complied with — Magistrates' Courts Rules (Cap. 5) 0.16 r.3.*

Where, under Order 16 of the Magistrates' Courts Rules, a magistrate orders a statement of defence to be filed, the provision of rule 3 of Order 16 that every allegation of fact in the statement of claim shall, if not denied specifically or by necessary implication or stated to be not admitted, be taken as established at the hearing, applies whether or not a defence is actually filed.

D Appeal from a judgment of the Magistrate's Court.

S. M. Koya for the appellant.

E A. M. Raman for the respondent.

HAMMETT Ag.C.J.: [2nd February 1962]—

This is an appeal against the decision of the Magistrate's Court at Rakiraki in the following circumstances.

F On the 28th August, 1961, the plaintiff-respondent issued a summons against the defendant-appellant claiming recovery of possession of certain property. The case came before the court on the 21st September, 1961, when both sides were represented by counsel. The learned trial Magistrate ordered that a defence be filed within three weeks and adjourned the hearing until the 19th October.

G On the 19th October counsel appeared and stated that it had been agreed that the defence should be given a further adjournment in the hope of a settlement being reached. The hearing was adjourned until the 16th November, 1961.

H On the 16th November, 1961, counsel appeared for each side. Counsel for the plaintiff pointed out that no defence had been filed as had been ordered and asked for an order for possession. Counsel for the defendant said that he had not filed a defence because it was hoped the parties would negotiate a settlement but that they had been "unable to get together". After hearing both parties the court

made an order for possession in favour of the plaintiff within one month on the ground that no defence had been filed. The defendant-appellant now appeals against the decision on the following grounds:—

1. THAT the learned trial Magistrate erred in law in making the Order for possession or eviction without taking any evidence from the Plaintiff or his witnesses in support of the Plaintiff's claim. A

2. THAT the learned trial Magistrate was unreasonable in refusing the Defendant's application for adjournment made by her through her Counsel on the 16th November, 1961. B

Under the provisions of the Magistrates' Courts Rules, Order 16, the court is empowered to order the defendant to file a statement of his defence. The material part of that order then reads—

"Rule 3. Whenever any pleading, statement or answer is ordered to be filed, the provisions of the following rules shall be observed:— C

(e) The defendant's pleading shall deny all such material allegations in the statement of claim as the defendant intends to deny at the hearing. Every allegation of fact, if not denied specifically or by necessary implication or stated to be not admitted, shall be taken as established at the hearing." D

It is clear that if the defendant had filed a defence every allegation of fact not denied specifically or by necessary implication therein would have been taken as having been established at the hearing without the necessity for formal proof thereof. It is the contention of counsel for the appellant that this rule is only of application when a defence has in fact been filed and not where, although it has been ordered to be filed, it has not been filed. He was unable to point out any provision which would otherwise cover the circumstances of this case. In my opinion the rule is quite specific and whether a defence is filed or not, if it has been ordered to be filed every allegation of fact in the statement of claim which is not denied specifically or by necessary implication or is stated to be not admitted must be taken as established at the hearing. There were sufficient allegations of fact in the statement of claim to entitle the plaintiff to succeed in his claim, and not one of these allegations had been denied. E

Under these circumstances it appears to me that the learned trial Magistrate did not err in law in making the order for possession without taking further evidence from the plaintiff in support of his claim. No arguments were adduced in favour of the second ground of appeal which does not appear to be warranted or supported by the record. For these reasons the appeal is dismissed with costs. F

Appeal dismissed. G

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