

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA

SC. Appeal No. 82/2013

SC/HC/CALA/438/12

High Court Case No.

SP/HCCA/KAG/820/2011

D.C. Kegalle Case No. 5682/L

In the matter of an Application for Leave to Appeal made in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 as amended by Act No. 54 of 2006.

1. Arampath Geeganage Somarathne
Buthgamuwa,
Pahala Buthgamuwa.
 2. Jayasooriya Arachchillage Siriyalatha
alias Siriyawathie
Ragal Kanda,
Alawwa.
 3. Rathnayake Adikaram Thenennehelaga
Sunil Rathnayake
Ragal Kanda,
Alawwa.
 4. Ranamuka Arachchillage Asoka
Ragal Kanda,
Alawwa.
- DEFENDANTS-RESPONDENTS-
PETITIONERS

Vs.

Hettimudiyanselage Somarathna
Kehel Kotuwa,
Ragal Kanda,
Alawwa.

PLAINTIFF-APPELLANT-RESPONDENT

BEFORE : **SISIRA J. DE ABREW, J.**
K.T. CHITRASIRI, J. &
PRASANNA S. JAYAWARDENA, PC. J.

COUNSEL : Ranil Samarasooriya with Nalaka Samarakoon for the
Defendant-Respondent-Petitioners.

Sunil Abeyrathne with Thashira Gunathilake for
Plaintiff-Appellant-Respondent.

ARGUED &

DECIDED ON : 22.07.2016

SISIRA J. DE ABREW, J.

Heard both Counsel in support of their respective cases.

This is an appeal against the judgment of the Civil Appellate High Court dated 09.06.2012 wherein the Civil Appellate High Court set aside the order of the learned District Judge dated 01.12.2010. This Court by its order dated 20.06.2013 granted leave to appeal on the questions of law set out in paragraph 28 (i) and (ii) of the petition dated 17.10.2012 which are reproduced below;

(i) Did the Respondent and his Registered Attorney-at-Law fail to establish sufficient cause and/or valid reason and or reasonable grounds that warrant the setting aside of the dismissal of the said D.C. Kegall Case No. 5682/L?

(ii) Did the Honourable Judges of the said Provincial High Court err in law in holding that the Respondent and his Registered Attorney-at-Law established sufficient cause and/or valid reason and or reasonable grounds that warrant the setting aside of the dismissal of the said D.C. Kegalle Case No. 5682/L?

The facts relevant to the issue in this case may be briefly summerized as follows.

The case in the District Court was taken up for trial on 05.07.2004. Part of the Plaintiff's evidence was concluded on this date (05.07.2004). The learned District Judge thereafter postponed the case for 22.11.2004, on which date the learned District Judge was on leave. The Acting District Judge, on 22.11.2004, put off the case for 02.05.2005. It has to be noted here that on 22.11.2004, the parties were present in Court. On 02.05.2005 when the case was taken up for trial, the Plaintiff was absent and unrepresented and the learned District Judge dismissed the Plaintiff's action.

Being aggrieved by the said order of the learned District Judge, the Plaintiff filed petition and affidavit under Section 87(3) of the Civil Procedure Code to have the order of dismissal set aside. After inquiry, the learned District Judge by his order dated 01.12.2010 dismissed the application of the Petitioner to re-open the case. Being aggrieved by the said order of the learned District Judge, the Plaintiff filed an appeal in the Civil Appellate High Court and the Civil Appellate High Court by its order dated 09.06.2012 set aside the order of the District Judge. Being aggrieved by the said order, the Defendant-Respondent (hereinafter referred to as the Defendant) appealed to this Court.

In order to allow an application under Section 87(3) of the Civil Procedure Code, the most important thing that must be considered is whether there were

reasonable grounds for the non appearance of the Plaintiff. The position taken up by the Plaintiff in this case is that on 22.11.2004 when the case was put off by the learned District Judge, he heard the date as 25.05.2005. The Plaintiff gave evidence to this effect. The Attorney-at-Law on record, Sujatha Udalagama too gave evidence stating that she heard the next trial date as 25.05.2005. Before she gave evidence she also filed an affidavit to this effect. This affidavit is annexed to the petition filed in the District Court seeking to set aside the order of the District Judge dismissing the plaint.

We have perused the evidence given by the Attorney-at-Law, Sujatha Udalagama. We see no reason to disbelieve the evidence of Sujatha Udalagama, AAL. We note that even the District Judge has not stated in his order that he disbelieved the evidence of Sujatha Udalagama, AAL.

Learned Counsel for the Appellant contends that although Attorney-at-Law, Sujatha Udalagama produced her Diary and the file cover of the case, she did not produce the said documents marked P2 and P3 for the inspection of the District Judge.

The question that must be considered is eventhough the said documents were not produced for the inspection of Court, can the Court dismiss or reject the evidence of Sujatha Udalagama, AAL. As pointed out earlier, we have perused the evidence of Sujatha Udalagama, AAL and we see no reason to reject the evidence of the said Attorney-at-Law. To allow an application under Section 87(3) of the Civil Procedure Code, what is necessary to establish that there were reasonable grounds for non appearance of the Plaintiff. When we go through evidence of the Plaintiff and the evidence of Sujatha Udalagama, AAL, we hold that they have established reasonable grounds for non appearance of the Plaintiff

on 02.05.2005. We therefore hold that the District Judge was in error when he rejected the application to have the ex parte decree vacated. We further hold that the order of the Civil Appellate High Court is correct. For the above reasons, we affirm the judgment of the Civil Appellate High Court and dismiss this appeal with costs fixed at Rs. 40,000/-.

JUDGE OF THE SUPREME COURT

K.T. CHITRASIRI, J.

I agree

JUDGE OF THE SUPREME COURT

PRASANNA S. JAYAWARDENA, PC. J.

I agree

JUDGE OF THE SUPREME COURT

NT/-