

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

In the matter of an appeal made in terms of Article 127 of the Constitution read together with Section 5 (c) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

SC / HC CALA / 408 / 2020

WP / HCCA / MT / 18 / 17 / RA

DC / Mount Lavinia / 2569 / 09 / L

1. Ukwattage Lalith Wijethunga,

39, Rampart Road, Ethul Kotte,
Kotte.

2. Liyanage Suneetha Perera,

40, ICD, Bangalawatta Road,
Kadawatha.

PLAINTIFFS

-Vs-

**1. Mohamed Hussain Mohamed
Amanulla,**

15A, Kensington Gardens,
Colombo 04.

2. Abdul Cader Mohamed Nazeer,

Perakum Mawatha,
Passara.

DEFENDANTS

AND THEN

- 1. Ukwattage Lalith Wijethunga,**
39, Rampart Road, Ethul Kotte,
Kotte.
- 2. Liyanage Suneetha Perera,**
40, ICD, Bangalawatta Road,
Kadawatha.

PLAINTIFF – PETITIONERS

-Vs-

- 1. Mohamed Hussain Mohamed
Amanulla,**
15A, Kensington Gardens,
Colombo 04.
- 2. Abdul Cader Mohamed Nazeer,**

Perakum Mawatha,

Passara.

DEFENDANT – RESPONDENTS

AND BETWEEN

1. Ukwattage Lalith Wijethunga,

39, Rampart Road, Ethul Kotte,

Kotte.

At Present

66/4, 1/1, Mirihana Road,

Nugegoda.

2. Liyanage Suneetha Perera,

40, ICD, Bangalawatta Road,

Kadawatha.

**PLAINTIFF – PETITIONER –
PETITIONERS**

-Vs-

1. Mohamed Hussain Mohamed

Amanulla,

15A, Kensington Gardens,
Colombo 04.

2. **Abdul Cader Mohamed Nazeer,**
Perakum Mawatha,
Passara.

DEFENDANT – RESPONDENT
– RESPONDENTS

AND NOW BETWEEN

Mohamed Hussain Mohamed
Amanulla,
15A, Kensington Gardens,
Colombo 04.

1ST DEFENDANT -
RESPONDENT -
RESPONDENT - PETITIONER

-Vs-

1. **Ukwattage Lalith Wijethunga,**
39, Rampart Road, Ethul Kotte,

Kotte.

At Present

66/4, 1/1, Mirihana Road,

Nugegoda.

2. Liyanage Suneetha Perera,

40, ICD, Bangalawatta Road,

Kadawatha.

PLAINTIFF - PETITIONER –
PETITIONER – RESPONDENT

Abdul Cader Mohamed Nazeer,

Perakum Mawatha,

Passara.

2ND DEFENDANT - RESPONDENT
- RESPONDENT - RESPONDENT

Before : S. Thurairaja, PC, J.
A.H.M.D. Nawaz, J. &
Achala Wengappuli, J.

Counsel : Ms. Saumya Amarasekara, PC, with Dammika
Welagedara instructed by Kalana S. Dinayadura

for the 1st Defendant-Respondent-Respondent-Petitioner.

D.D.P. Dasanayaka with Thamaranga Harshanath, Ms. Dilrukshi Chathu Perera Ms. Kaushali Samarathunga instructed by H.P. Samantha Kumari for the 1st Plaintiff-Petitioner-Petitioner-Respondent.

Argued and
decided on : **16.09.2025**

A.H.M.D. NAWAZ, J.

We have heard submissions of the learned President’s Counsel for the 1st Defendant-Respondent-Respondent-Petitioner and the learned Counsel for the 1st Plaintiff-Petitioner-Petitioner-Respondent.

After careful consideration, the Court grants leave to appeal on the following specific question of law:

“Did the Provincial High Court of Civil Appeal of Mount Lavinia err in law by exercising revisionary jurisdiction with regard to the Application of the 1st and 2nd Plaintiff-Petitioner-Petitioner-Respondent?”

Upon inquiry of the court, both learned counsel moved that the Court should act under the *proviso* to Rule No. 16 of the Supreme Court Rules, namely, that this matter could be disposed of on their oral submissions.

The court has heard submissions of both counsel on the appeal and would proceed to pronounce the following judgement for the setting aside of the two deeds in favour of the said Defendants, declaration of title and ejection of the two Defendants.

It so happened that there was an amended plaint that was sought to be filed, but this application was rejected. Thereafter, the Plaintiffs made an application to the Civil Appellate High Court of Mount Lavinia under WP/HCCA/MT/43/2012 LA. That application to the Civil High Appellate Court was also rejected.

The order of the Civil Appellate High Court was dispatched to the District Court of Mount Lavinia and the District Court sent notice by ordinary post on 01/04/2016. The pronouncement of the Judgment of the Civil Appellate High Court was made on 24/05/2016 in the presence of the learned Counsel for the Defendant-Respondent-Appellants.

However, the Plaintiff was not present in Court nor was the Registered Attorney present in Court on that day.

However, the learned District Judge of the District Court of Mount Lavinia gave another date for the trial to take place. He fixed this case to be called in Court on 28/06/2016. Even on that day, neither the Plaintiff nor the Registered Attorney-at-Law were present in Court.

When the case came up on that day, the learned trial Judge fixed this case for trial on 05/09/2016. On 05/09/2016 when the case came up for trial, the learned District Court Judge dismissed the case of the Plaintiffs as the Plaintiffs were absent and unrepresented on that date.

The application made by the Plaintiff to purge default was dismissed and the Plaintiff filed Leave to Appeal, however, it was withdrawn subsequently by the

Plaintiff and thereafter, a revision application was made to the Civil Appellate High Court of the Western Province.

This revision application was resisted by the Defendants on the grounds that if the 1st Plaintiff was overseas, the 2nd Plaintiff could have been present in Court. It was also urged on behalf of the Defendants that there was no impediment to the Registered Attorney-at-Law representing these Plaintiffs in Court on that date.

In fact, the 1st Defendant relied on a Seven Judge Bench decision of this Court; ***Barbara Iranganie De Silva v. Hewa Waduge Indralatha***¹ a Judgment of this Court pronounced on 03/08/2017 which had affirmed a previous judgment of this Court. There were also objections based on exceptional circumstances to the invocation of the revisionary jurisdiction.

Having heard both parties, the learned High Court Judges of the Civil Appellate High Court allowed the revision application and ordered the District Judge to restore the case to the roll. The action of the Plaintiff was ordered to be proceeded with according to law. It is against that judgment of the Civil Appellate High Court that this Appeal has been preferred.

We have given careful consideration to the submissions made by the learned President's Counsel and the learned Counsel and we take the view that the learned Civil Appellate High Court Judges fell into an error by not taking into account the conduct of the Plaintiff in filing the revision application.

In the case of ***Rev. Sumanatissa v. Harry***² the Court of Appeal took the view that in regard to purging a default, it has to be objective and not subjective. When one takes an objective view of the conduct of the Plaintiffs in proceeding with this

¹ [(2017) BALR 68]

² [2009, (1) Sri Lanka Law Reports 31]

case, it is quite clear that the Plaintiffs had been in contumacious default of their rights to vindicate the case that they presented before the District Court.

When a Registered Attorney is appointed, Section 27(1) of the Civil Procedure Code has been interpreted that he has to remain on record as the representative of the Plaintiff or the Defendant to supervise and regulate the conduct of the case and keep the progress of the case firmly in mind in order to prosecute the interest of the parties.

The failure of the Registered Attorney-at-Law in this case, is quite striking. Neither was the Registered Attorney-at-Law present in Court on the day when this case was called in the District Court and fixed for trial nor was he in firm control of the progress of this case resulting in negligent conduct affecting the duties owed to the client. There are several cases of this Court which state that the negligence of the Attorney-at-Law could be attributed to the party if it is so prominent as to prejudice the rights of the party in question.

Undoubtedly, the version of the Plaintiff that he had changed his address may be true, but he should have apprised his Registered Attorney-at-Law of the change of address and even the Court if his rights were in jeopardy. Thus, we find that even the Plaintiff in this case has been negligent in not having kept up with the pace with which he has to vindicate his own rights in the case. Such conduct could not have merited the exceptional remedy of revision in the Civil Appellate High Court. It is on that account that this Court takes the view that the Civil Appellate High Court fell into an error when they ordered the District Judge to proceed with the case which had been properly dismissed.

Therefore, we proceed to answer the question of law raised by the Appellant in the affirmative and we set aside the Judgment of the Civil Appellate High Court dated 30/09/2020.

The initial order of dismissal of the Plaintiffs' action should stand and the learned District Judge is directed to pronounce this decision in Court.

The Appeal is allowed. This Court deems it appropriate to impose exemplary costs which this Court thinks would be a panacea for all ills to be averted at all costs in the future. We proceed to impose a cost in a sum of Rs. 250,000/- (Two Hundred Fifty Thousand Rupees) payable by the two Plaintiffs to the Defendants, within 03 months from the date of pronouncement of this order in the District Court.

The Registrar is directed to dispatch a copy of this order to the relevant Courts.

Judge of the Supreme Court

S. Thurairaja, PC, J.

Judge of the Supreme Court

I agree.

Achala Wengppuli, J.

Judge of the Supreme Court

I agree.