

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

C.A 588/1998 (F)  
D.C. Marawila 399/L

W. F. Rohan Susantha Sovis of  
Lihiriyagama.

**PLAINTIFF**

Vs.

1. J. A. Anthony Perera
2. W. F. Mary Sovis

Both of Boralessa'  
Lunuwila.

**DEFENDANTS**

**AND**

3. P. L. Nicholas Premalal Silva
4. A. Dorin Silva

both of No. 93/50, Modera Road,  
Colombo 15.

5. W. V. A. G. Lionel Princely  
Fernando of Boralessa,  
Lunuwila.

**ADDED DEFENDANTS**

**AND NOW BETWEEN**

W. F. Rohan Susantha Sovis of  
Lihiriyagama.

**PLAINTIFF-APPELLANT**

1. J. A. Anthony Perera
2. W. F. Mary Sovis

Both of Boralessa'  
Lunuwila.

**DEFENDANTS-RESPONDENTS**

3. P. L. Nicholas Premalal Silva
4. A. Dorin Silva

Both of No. 93/50, Modera Road,  
Colombo 15.

5. W. V. A. G. Lionel Princely  
Fernando of Boralessa,  
Lunuwila.

**ADDED DEFENDANTS-  
RESPONDENTS**

**BEFORE:** Anil Gooneratne J.

**COUNSEL;** Both parties are absent and unrepresented

**DECIDED ON;** 15.11.2012

**GOONERATNE J.**

This appeal was listed for hearing on 25.7.2012. On the said date of hearing both Appellants and Respondents were absent and

unrepresented. This appeal was listed prior to the date of hearing on 4.11.2011, 13.1.2012, 12.3.2012 and on all those dates parties were absent and unrepresented. However perusal of the docket I find that originally when notices were dispatched the Appellant was present and on 3.8.2011 and represented in court on 6.10.2011. However on any one of the above dates the Respondents were absent and unrepresented. It appears to this court that the Appellant has failed to exercise due diligence to prosecute this appeal. Nevertheless this court is bound to consider this appeal and give it's decisions.

Action was filed in the District Court of Marawila by the Plaintiff against the 1<sup>st</sup> & 2<sup>nd</sup> Defendants for a declaration that deed No. 495 of 5.5.1987 executed in favour of the said Defendants is a nullity and for a declaration that the Plaintiff-Appellant is the lawful owner of the land described in the schedule to the plaint. The 3<sup>rd</sup> – 5<sup>th</sup> Respondents were added to this case on the basis that they were owners of a portion of the premises described in the schedule to the plaint. Parties proceeded to trial on 25 issues. The trial Judge delivered the judgment on 16.7.1998 dismissing Plaintiff's action. Issue Nos. 1 – 4 indicates that the land in dispute had been transferred by deed No. 494 to the 1<sup>st</sup> & 2<sup>nd</sup> Defendants. At the time of the transfer the Plaintiff was a minor. Having attained the age of majority

Plaintiff had called upon the 1<sup>st</sup> & 2<sup>nd</sup> Defendants to re-convey the property and the Defendants had failed and neglected to re-transfer.

The trial judge has inter alia come to the conclusion that the Plaintiff-Appellant had acted in collusion with the 1<sup>st</sup> & 2<sup>nd</sup> Defendants-Respondents. This court does not wish to disturb those findings. As such I would affirm the judgment and dismiss this appeal without costs. However this court observes that if a proper application is submitted to this court for re-listing of this appeal, this court would consider such application as the judgment is delivered by this court in the absence of parties, who could have, if represented, placed factual and legal matters to support each others case. However this court would affirm the judgment of the learned District Judge and dismiss this appeal without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL