

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

CA Application No.Transfer of 366/2012

DC Nuwaraeliya Case No.3366/L

E.S. Rajapakse,
No: 60,
Park Road,
Nuwara Eliya.

Plaintiff- Petitioner

Vs.

01. V. Radhakrishnan,
02. R. Rajaram,

Both of at,

No. 42,
Church Road,
Nuwara Eliya.

Defendant-Respondents

CA 366/2012.

DC Nuwaraeliya Case No. 3366/L

BEFORE : S. Sriskandarajah, J. P/CA
P.W.D.C. Jayathilake, J.

COUNSEL : Dr. Sunil Cooray for the Petitioner.
Priyantha Gamage for the 1st and 2nd
Respondents.

HEARD &

DECIDED ON : 28.11.2012.

S. Sriskandarajah, J. (P. C/A)

Learned Counsel for the Petitioner supports this application to transfer the District Court of Nuwaraeliya Case No.3366/L under section 46 of the Judicature Act read with section 10 of the Civil Procedure Code. The learned Counsel submitted that the case was originally filed in the District Court of Nuwara Eliya and the learned

District Judge declined to hear the said case and has informed the Judicial Service Commission to appoint a judge to hear the case and the Judicial Service Commission has appointed the Additional District Judge of Nuwara Eliya to hear this case. As he also declined to hear the said case and referred the matter to the Judicial Service Commission, the Judicial Service Commission has now appointed the District Judge of Welimada to hear and conclude this case. The learned Counsel for the Petitioner submitted that the learned District Judge of Welimada could only be available on Fridays and Mondays to hear the case as he has his regular work in his permanent Court in Welimada. As the Counsel who was retained by the Plaintiff-Petitioner is not available on these days to appear for the Plaintiff-Petitioner and therefore the Plaintiff-Petitioner moves that this case be transferred to another Court so that the Plaintiff-Petitioner's Counsel could get a suitable date to fix this case for trial.

This Court is of the view that the above grounds for transfer will not fall within the Provisions of section 46 of the Judicature Act. It cannot be said that it is expedient for to transfer this case to another court only on the basis that the Counsel for the Petitioner is not

available on days where the learned District Judge is free to hear the case. In these circumstances this Court refuses to issue notice.

PRESIDENT OF THE COURT OF APPEAL.

P.W.D.C. Jayathilake, J

I agree.

JUDGE OF THE COURT OF APPEAL.

NR/-