

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

CA No 893/97 (F)

DC Polonnaruwa 5621/L

Sinhalapedige Anulawathie
Raja Ela, 16 Ela,
Hingurakgoda.

Substituted Plaintiff

Vs.

1. K.D.Baby
Raja Ela, 16 Ela,
Hingurakgoda.
2. S.P.Somawathie
3. S.P.Karunawathie
70 Acres,
Hingurakgoda South.

Defendants

And Now Between

Sinhalapedige Anulawathie
Raja Ela, 16 Ela,
Hingurakgoda.

Substituted Plaintiff Appellant

Vs.

1. K.D.Baby
Raja Ela, 16 Ela,
Hingurakgoda.
2. S.P.Somawathie
3. S.P.Karunawathie
70 Acres,
Hingurakgoda South.

Defendant-Respondents

C.A. Appeal No. 893/97 (F) - D.C. Polonnaruwa No. 5621/L

Before : **K.T. CHITRASIRI, J.**

Counsel : M. Ganeshwaran for the Plaintiff-Appellant.

Kumudu Wijesooriya for the 1st Defendant-Respondent.

Mihiri Abeyrathna for the 2nd and 3rd Defendant-Respondents.

Argued & Decided on : 11.12.2012.

K.T. Chitrasiri, J.

Learned Counsel for the appellant submits that his clients, the plaintiff-appellant moved to withdraw the plaint in this case when it was taken up for trial on 12th November 1997 before the learned District Judge of Polonnaruwa. Both Counsel for the respondents also confirm the said position. Proceedings recorded on that date (page 64 of the brief) also show that the plaintiff had moved to withdraw the plaint though no order had been made accordingly dismissing the plaint.

Learned counsel for the appellant also submits that the trial Judge, on the same date, had proceeded to answer

issues bearing Nos. 4-11 raised by the two defendants without considering any evidence. Indeed no evidence whatsoever had been recorded in this case before the learned District Judge. Accordingly, he submits that the impugned judgment is defective in every aspect. Both Counsel appearing for the respondents also concede that the judgment is erroneous for the reasons submitted by the learned Counsel for the appellant.

Upon a perusal of the proceeding dated 12th November 1997, it is clear that the learned District Judge had answered the issues raised by the defendant-respondents without any evidence been led before the District Court. No reasons are given for the answers to the issues. Moreover, even though an application had been made to withdraw the plaint, no order of the Court had been made accordingly. For the aforesaid reasons the impugned order made on the 12th November, 1997 by the learned District Judge is set aside.

However, since the plaintiff-appellant had made an application to withdraw the plaint that he had filed in the District Court, it should remain intact. No application has been made to withdraw the said application of the plaintiff at any stage. Therefore the learned District Judge of Polonnaruwa is directed

to make an order dismissing the plaint acting upon the application to withdraw the same. Learned District Judge is also directed to inform the parties of the decision of this Court and make an order dismissing the plaint, in their presence. Learned District Judge should also take steps to enter the decree accordingly.

Having considered the circumstances of the case, no order is made as to the costs of the appeal. Appeal is allowed. No costs.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

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