

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

Charles Gunawardena Amunupura  
Amunupura, Ketakumbura,  
Kadugannawa.

**PLAINTIFF**

Vs.

C.A 1226/1998 (F)  
D.C. Kandy 21373/MR

1. Gamini Samarakoon
2. Seetha Malani Seneviratne
3. Chandra Seneviratne
4. Chandra Kumarihamy

All of Amunupura, Ketakumbura,  
Kadugannawa.

**DEFENDANTS**

**AND BETWEEN**

Charles Gunawardena Amunupura  
Amunupura, Ketakumbura,  
Kadugannawa.

**PLAINTIFF-APPELLANT**

Vs.

1. Gamini Samarakoon
2. Seetha Malani Seneviratne
3. Chandra Seneviratne
4. Chandra Kumarihamy

All of Amunupura, Ketakumbura,  
Kadugannawa.

**DEFENDANTS-RESPONDENTS**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** Plaintiff-Appellant is absent and unrepresented  
R. Prematilleke for 1<sup>st</sup> - 4<sup>th</sup> Defendants-Respondents

**ARGUED ON:** 23.05.2012

**DECIDED ON:** 24.05.2012

**GOONERATNE J.**

This was an action filed in the District Court of Kandy claiming damages in a sum of Rs. 150,000/= from the Defendants-Respondents for having cut the embankment of Plaintiff's land and thereby causing damages to his house in September 1986. As such Plaintiff allege a loss of lateral

support. At the hearing of this appeal the Plaintiff-Appellant was absent and unrepresented. In fact on several days prior to hearing of this appeal when this case had been mentioned in this court, Appellants were absent and unrepresented. In the Trial Court parties proceeded to trial on 20 issues. The trial Judge had, as a preliminary issue tried issue No. 7 which reads thus:

“වත්තිකරුවන් නීතිවරෝධව පැමිණිලිකරුගේ වරොධතා, නොතකා එම ආංශික ආධාරය නැති කරන ලද්දේද?

The trial Judge also observes that relevant to issue No. (7) would be issue No. 16.

Learned counsel for Defendant-Respondents referred to the judgment of the trial Judge and drew the attention of this court to the evidence of Plaintiff and his other witnesses. In cross-examination the Plaintiff was not able to clearly implicate and identify the Defendants as regards the act of cutting an embankment on his land. Trial Judge has very correctly stated that the case of Plaintiff was very weak and has not been substantiated by evidence. Plaintiff led the evidence of two retired Grama Sevakas and a Surveyor. Non of them were able to support the case of Plaintiff-Appellant. The learned District Judge has answered issue No. 7 & 16 in the negative, and dismissed Plaintiff's action.

In all the above circumstance there is no merit in this appeal. I see no basis to interfere with the judgment of the District Court. Therefore I affirm the judgment of the learned District Judge and dismiss this appeal without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL