

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

In the matter of an application for
transfer of an action under section 46 of
the Judicature Act section 10 and the
other imperative Sections of the Civil
Procedure Code.

Kahawa Palliya Guruge Dulawathi,
Mahawatta, Keradewala,
Majuwana.

Plaintiff

Vs.

1. K.M.G. Leelananda Dias
Mahawatta, Keradewala,
Majuwana.
2. Saranawathi Jalathge,
Mahawatta, Keradewala,
Majuwana.

Defendants

AND

Kahawa Palliya Guruge Dulawathi,
Mahawatta, Keradewala,
Majuwana.

Plaintiff-Petitioner

Case No.CATR-816/2010

DC Gall:14375/L

Vs.

1. K.M.G. Leelananda Dias
Mahawatta, Keradewala,
Majuwana.
2. Saranawathi Jalathge,
Mahawatta, Keradewala,
Majuwana.

Defendant-RespondentsBEFORE : **S. SRISKANDARAJAH, J (P/CA)**

COUNSEL : Hiran de Alwis
for the Petitioners,
Mahinda Nanayakkara
for the 1st Respondent.

Argued on : 09.03.2012Decided on : 21.06.2012**S.Sriskandarajah.J,**

The Petitioner in this application has sought an order under Section 40 of the Judicature Act to transfer the D.C. Galle Case No.1437⁵/₄L to another District Court. The Petitioner submits that the Complaint in this case was filed on the 23rd April 2001, and the amended Complaint was filed on the 14th of April 2003. The Answer was filed on 9th of July 2008, and the trial date was fixed for the 26th of November 2009. The Petitioner submitted that the case has not been concluded up to date and no evidence has been led so far. The Petitioner's main ground for transfer of this case from the District Court of Galle is that no lawyers are presently availing themselves to appear for the Petitioner due to the 1st Defendant Respondent being an Attorney-at-Law practicing in the Galle

Bar. The Petitioner also submitted that on the last date, viz., the 20th October 2010, the learned District Judge had indicated and warned the Petitioner that the Plaintiff's action would have to be dismissed if no legal representation is obtained.

It appears from the material submitted to Court that there was a dispute between the Petitioner and the 1st Respondent, other than the civil case filed in the District Court of Galle, and due to this, action was filed in the Magistrate's Court by the Petitioner as well as the Respondent, and the proceedings in the Magistrate's Court was thereafter withdrawn due to an understanding between the parties. It also transpired from the material placed before Court that the 1st Respondent has joined the Galle Bar after enrolling himself as an Attorney-at-Law only in 2010, and in these circumstances one cannot presume that he will have a control or influence among the other members of the legal profession in the District Court of Galle, and the case is now assigned before a Judge who is prepared to take it up, and the case is now fixed for trial. There is no material to show that the Petitioner's appearance or his witnesses are being prevented. The only ground on which the Petitioner is seeking this transfer is, that he is unable to retain Counsel from the Galle Bar. Even if this case is transferred, the Petitioner would have to get the services of a Counsel from another Bar. In these circumstances the Petitioner is not prevented from retaining a Counsel from another Bar to appear in this case. In the case of *Subramaniam Vs. Subramaniam* 1980 2 SLR page 58, the Court of Appeal has refused a similar application, although there was specific complaints of interference by one of the parties who happened to be a Senior Lawyer practising at that station. In the present case the Respondent's Lawyer is not a Senior Lawyer, who, as I observed, could have any influence in the Bar and also there is no evidence to show that he is interfering in the proceedings of that case. As the Petitioner has not submitted sufficient material to transfer this case from the District Court of Galle, I dismiss this application of transfer and I award no cost.

President of the Court of Appeal