

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

**CA 929/98 (F)**

DC Trincomalee No: 314/93

Parvathi Pillai  
No: 365,  
Main Street,  
Trincomalee.

**Petitioner**

**Vs.**

Kathirawelu Sithrawel  
No: 261,  
Anpuvali puram,  
Trincomalee.

**Respondent**

C.A. No. 929/98(F)

D.C. Trincomalee No.314/93

BEFORE : K. T. CHITRASIRI, J.

COUNSEL : P. Krishanthan for the plaintiff- appellant.  
Daya Guruge for the 63<sup>rd</sup> defendant-respondent

ARGUED AND

DECIDED ON : 19<sup>th</sup> October, 2012

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**K. T. CHITRASIRI, J.**

This is an appeal to set aside the order made by the learned District Judge of Trincomalee on the 05<sup>th</sup> of December 1997. When this matter was taken up before the learned District Judge of Trincomalee on the said date, a minute had been made in the language of English stating that the “*Order due*”. Immediately below the said entry, learned District Judge had made another minute in the language of Tamil. Learned Counsel for the appellant having read the minute that was made in Tamil submits that the English translation of the order made on the 05<sup>th</sup> of December 1997 should read as “*Action is dismissed without costs*”.

Having perused the brief, both Counsel submit that no proceedings made on that date are found in the brief other than the said minute on the 05<sup>th</sup> of December 1997 which is found in the journal entry 67. The Court also is unable to find any proceedings other than the said minute made on the 05<sup>th</sup> of December 1997. Accordingly, it is clear that the learned District Judge had not given any reasons for the dismissal of the action which was recorded in the Journal entry 67 on the 05<sup>th</sup> of December 1997. Therefore it is clear that the learned District Judge had not given reasons when he dismissed the plaint on that date.

Since no reasons have been given by the learned District Judge for the order that he made on the 05<sup>th</sup> of December 1997 by which he dismissed the action, both Counsel agree that it is an incorrect decision. In the light of the above, the impugned judgment dated 05<sup>th</sup> of December 1997 is set aside.

Journal Entry 65 which is found at page 68 of the brief refers to a payment of surveyor's fee amounting to Rs. 5,559/=. It shows that the case had not reached the trial stage as yet. Therefore the Learned District Judge of

Trincomalee is directed to proceed with the action from the point that it was stopped on 04<sup>th</sup> of December 1997 which appears in the journal entry 66.

*Appeal allowed. No costs.*

JUDGE OF THE COURT OF APPEAL

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