

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

In the matter of an appeal

Seetha Sarojini Wijegunaratne
No. 1630, Kotta Road,
Rajagiriya.

Plaintiff

C.A. Appeal No. 704/95F
D.C. Mathugama 1022/L

-Vs-

Gunaratne Wickramarachchi
Kirigalgodella,
Wadugoda,
Payagala.

Defendant

And now Between

Gunaratne Wickramarachchi
Kirigalgodella,
Wadugoda,
Payagala.

Defendant / Appellant

-Vs-

Seetha Sarojini Wijegunaratne
No. 1630, Kotta Road,
Rajagiriya.

Plaintiff/ Respondent

^{PC}
Counsel: W. Dayaratne with R. Jayawardene for the
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Plaintiff/Respondent

Niluka Dissanayake for the

Defendant/Appellant

Written Submissions: 1-4-2011 (Plaintiff/Respondent)

Before: Rohini Marasinghe J

Judgment: 20-06-11

CA 704-95

The parties have agreed to conclude the appeal by way of written submissions. (Vide journal entry dated 28-7-2010) The defendant-appellant had been absent and unrepresented on two occasions and on his application the appeal was re-listed for hearing on those occasions. The appellant thereafter had taken several dates to file his written submissions in support of the averments

contained in his petition of appeal. But he had failed to file the same. On 1-4-2011 he had taken a final date to file his written submissions. And, on the same day he had agreed before the court that in the event the written submissions were not tendered by the agreed date to court the appeal would be dismissed *in limine*.

Notwithstanding the undertaking of the appellant I have not dismissed the appeal on that ground.

The written submissions were not filed by the appellant. The written submissions of the respondent were filed on record. According to the submissions of the plaintiff-respondent an action had been filed against the defendant- appellant seeking *inter alia* a declaration of title to the land described in the plaint. The identity of the corpus was the main issue. The plaintiff submits that he had sufficiently identified the land in suit. At the trial the plaintiff-respondent had taken a commission. The surveyor had superimposed the plan No 204 on the Surveyor General's plan no 63221. Additionally, the surveyor had given evidence at the trial. The defendant also had taken a commission. That plan no 851 was prepared by a surveyor named Ilangakone. The surveyor Ilangakone had surveyed the land as shown by the defendant and superimposed the plan No 204 and prepared the plan No 851. That plan had been marked as V6. The learned trial Judge had considered the evidence of both surveyors and accepted the evidence of the surveyor Perera who had prepared the plan No 204. Consequently, the learned trial Judge had answered the issues relating to the identity of the corpus in favour of the plaintiff. The reasons for this determination are

contained in pages 5 to 7 of the impugned judgment. The issue relating to the identity of the corpus had been sufficiently addressed by the trial Judge. The defendant – appellant was one Gunaratne Wickraarachchi. The learned trial Judge had rejected the evidence of the defendant. (Vide page 5 of the Judgment)

I see no reason to interfere with the decision of the trial Judge. The judgment is affirmed.

The appeal is dismissed.

Rohini Marasinghe J
Judge of the Court of Appeal.