

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

C.A. No. 688/96 F

D.C. Mt. Lavinia 44/92M

Abeywardena Wickremasooriya
Ranpatabendige Kusumawathy,
Athurugiriya Road,
Homagama.

Plaintiff

Vs.

1. Costa Patabendige Anne Sugandika
Yasmin Perera,
217, Temple Road,
Colombo 10.
2. Aswadduma Gedara Jayatilleka,
H01, Bolamesawatta,
Narahenpita.

Defendants

AND

Costa Patabendige Anne Sugandika Yasmin
Perera,

217, Temple Road,

Colombo 10.

1st Defendant-Petitioner

Vs.

Abeywardena Wickremasooriya
Ranapatabendige Kusumawathy,

Athurugiriya Road,

Homagama.

Plaintiff-Respondent

2. Aswadduma Gedara Jayatilleka,

Bolamesawatta,

Narahenpita.

2nd Defendant-Respondent

Costa Patabendige Anne Sugandika Yasmin
Perera,

217, Temple Road,

Colombo 10.

1st Defendant-Petitioner-Appellant

Vs.

Abeywardena Wickremasooriya
Ranapatabendige Kusumawathy,
Athurugiriya Road,
Homagama. (Deceased)

Thotahewage Asanka Sanjaya Jayamanne,
No. 10, Akkara Kolaniya,
Thorapitiya, Hasalaka.

Substituted-Plaintiff-Respondent

2. Aswadduma Gedara Jayatilleka,
H 01, Bolameswatta,
Narahenpita.

2nd Defendant-Respondent-Respondent

Before : A.W.A. Salam, J.

Counsel : Jacob Joseph for 1st Defendant-Petitioner-
Appellant and K.W.A. Thisuni Jayawardane for the Plaintiff-
Respondent-Respondent.

Written Submissions

tendered on : 30.09.2010

Decided on : 26.05.2011

A.W.A. Salam, J.

This appeal arises from the refusal to set aside a judgment and decree entered consequent upon the default of appearance of the 1st Defendant-Petitioner-Appellant (Appellant) on the day fixed for inter partes trial. As far as his appeal is concerned, the facts briefly are that on 11.2.1994 action No D.C. Mt. Lavinia 44/92M was mentioned to fix for trial. According to the journal entries, on 11.2.1994, it had been called in open Court and fixed for trial on 14.06.1994. Subsequently, when it was taken up for trial on 14.06.1994, the appellant was absent and as a result it was fixed for exparte hearing on for 29.7.1994. Eventually on 28.10.1994 the exparte trial against the appellant was taken up for hearing and concluded on the same day in favour of the Plaintiff-Respondent-Respondent (Plaintiff). Afterward, a copy of the decree was served on the defendant and he filed an application to purge his default. As stated above the learned District Judge dismissed his application by order dated 05.09.1996.

Briefly stated, in the application to purge default the appellant maintained that on 11.2.1994 she was represented by her registered Attorney-at-Law who later

informed her that the trial was fixed for 14.10.1994. She further stated in her application that she came to Court on 14.10.1994 and upon having learnt that the case was not called, she made inquiries at Registry and to realize that the trial had in fact been fixed for 14.6.1994 and concluded on the same day without her participation.

On a perusal of the journal entries maintained by the learned district judge, it appears that the ex parte trial had been in fact taken up and concluded not on 14.10.1994 as stated by the appellant in her application but on 28.10.1994, namely two weeks thereafter. If the appellant had checked the record on 14.10. 1994, she ought to have realized that the exparte trial had not been taken up on the date that she had incorrectly been informed as the date of trial. This clearly shows that the appellant was not diligently prosecuting her cause in the district court. Besides, this fact clearly shows that the version of the appellant relating to the explanation given against the default of appearance is totally unworthy of any credit.

Moreover, the reasoning adopted by the learned district judge to dismiss the application made to vacate the judgment and decree entered for default of

appearance does not appear to me as illogical or faulty. Therefore, the appeal merits no favourable consideration. Hence, this appeal is dismissed.

There shall be no costs.

Judge of the Court of Appeal

NT/-