

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

C.A. No: 310/98 (f)

D. C. Mt. Lavinia/Case No: 02/94/P

Peter Chandrیشان Manilal Perera.
13/2, Sri Saranankara Mawatha,
Pamankada.

And presently of

No.30/5,
Col.T. G. Jayawardne Mawatha,
Colombo 03.

PLAINTIFF

AND

Mahawatta Kankanamlage Sirisena,
233, Thalawathugoda Road,
Mirihana.

DEFENDANT

And Now Between

Mahawatta Kankanamlage Sirisena,
233 Thalawathugoda Road,
Mirihana.

DEFENDANT PETITIONER

AND

Peter Chandrیشان Manilal Perera.
13/2 Sri Saranankara Mawatha,
Pamankada.

And presently at.

No.30/5,
Col. T. G. Jayawardne Mawatha,
Colombo 03.

PLAINTIFF RESPONDENT

C.A.No.310/98(F)

D.C.Mount Lavinia No.2/94/P

Before : **K.T.Chitrasiri, J**

Counsel : S.A.D.S.Suraweera for the Defendant-Appellant
Kuvera de Soyza PC with Asela Rakawa for the
Plaintiff-Respondent

Argued &
Decided on : 23.01.2013

K.T.Chitrasiri, J.

Both Counsel heard in support of their respective cases.

Learned Counsel for the defendant-appellant submits that the deed bearing No.141 relied upon by the plaintiff-respondent had been executed fraudulently. He further states that the reasons for the contention above are mentioned in the statement of claim of the defendant. Learned President's Counsel for the plaintiff-respondent submits that the issue in respect of the said contention of the Counsel for the plaintiff-respondent had been raised in the issue bearing No.5 at the commencement of the trial.

Both Counsel submit that the learned District Judge had refused to allow an application made by the plaintiff-respondent to call the Notary who executed the said deed 141 as a witness causing serious prejudice to both the parties. Particularly, the said refusal to call the notary as a witness had affected adversely to the defendant-appellant since the entire dispute in this case rested on the execution of the deed 141.

Considering the facts stated above both Counsel at this stage, agree to proceed with the trial in the District Court from the point the application was made to prove the execution of the deeds marked P6 and P7 and to set aside the proceedings recorded thereafter.

In these circumstances, the proceeding^s recorded subsequent to the refusal to call the witnesses to prove the deed 141 is set aside.. Accordingly, the impugned judgment dated 09.03.98 is also set aside.

The learned District Judge is directed to allow the plaintiff-respondent to call witnesses if an application is made and to commence the proceedings thereafter. The defendant-appellant is also has the right to call witnesses on his behalf if necessary.

In the light of the above, proceedings in this Court is terminated.

Registrar of this Court is directed to send the original case record without delay to the District Court of Mt.Lavinia in order to commence further trial.

Proceedings terminated.

JUDGE OF THE COURT OF APPEAL

KLP/-