

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

CA No.277 /98 (F)

D.C.Negombo No.5145/L.

Kolaba Liyanage Francis Fanando
Negombo Road,
Maradagahamula.

Appellant

Vs.

J.K. Lili Ranaweera Perera
No: 401,
Negombo Road,
Maradagahamula.

Respondent

C.A.No.277/98 (F)

D.C.Negombo No.5145/L.


Before : K.T.Chitrasiri,J.

Counsel : Subashini Cooray for the Plaintiff-Appellant.
Iranga Perera for the Defendant- Respondent.

Argued and
Decided on : 18.2.2013.

K.T.Chitrasiri J.

This is an appeal seeking to set aside the judgment dated 22/5/1998 of the learned District Judge of Negombo. In that judgment the learned District Judge whilst dismissing the plaint has stated that the plaintiff has failed to show the metes and bounds of the roadway that he had claimed. The plaint filed in this case is found at page 21 of the brief and it is dated 24/10/1995. In that plaint the plaintiff has sought to have an access road, the use of which had been supposed to have been prevented by the defendant. However, no schedule is found in the plaint to describe the roadway claimed by the plaintiff. The plaintiff has failed to describe the metes and bounds of the said roadway at least by way of a sketch anywhere in the plaint.

Section 41 of the Civil Procedure Code requires to show so far as possible, the land in suit, by reference to its physical metes and bounds or by reference to a sufficient, sketch, map, or plan ^{by annexing it} ~~to be annexed~~ to the  plaintiff and not only by its name.

Having looked at the plaint, it is clear that the plaintiff has failed to comply with the aforesaid Section 41 of the Civil Procedure Code. This requirement referred to in the said Section 41 had been upheld in the decision of Chettiyar Vs. Chettiyar as well (S.C. appeal No.101/2009).

In view of the above position in law, it is clear that the learned District Judge is correct when she dismissed the plaint. Therefore I am not inclined to interfere with the said decision of the learned District Judge.

For the aforesaid reasons the appeal is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

WC/-