

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

C.A. 877/98 (F)

D.C.Puttalam 792/L

Sunil Pushpa Kumara
Near the Temple,
Madurankuliya.

Appellants

Vs.

Rohitha Tissa Jayadewa Ganewatta
No: 06,
Udaya Mawatha,
Temple Road,
Mt.Lavinia.

Respondent

C.A.No.877/98 (F)**D.C.Puttalam 792/L**

Before : K.T.Chitrasiri,J.

Counsel : Dhanasha Kaneshayogam for the
4th Defendant-Appellant.

Argued and
Decided on : 20.02.2013.

K.T.Chitrasiri J.

Mr. N. Bathalameous who is watching the interest of the heirs of the deceased plaintiff-respondent submits that his clients have not been made parties to this appeal even though they were substituted in the District Court. He also submits that both notices of appeal filed by the 1st and 2nd defendant-appellants and the 4th defendant had been filed on 30/7/1998 and therefore both notices were filed out side the period of time, allowed under Section 755 of the Civil Procedure Code. Having perused the original record, Counsel for the 4th Defendant-Appellant concedes that both the notices of appeal had been filed out of time.

Upon perusal of both notices of appeals, it is clear that the notices had been tendered on 30/7/1998 and it is clearly visible on the two notices. Furthermore, two journal entries made on 13/7/1998 which are found at page 31 of the brief also confirm this position.

In view of the above circumstances, Court decides that the notices of appeal of the 1st and 2nd defendant-appellants and the 4th defendant appellant have been filed after 14 days from the date of the judgment that falls out side the period allowed in terms of Section 755 of the Civil Procedure Code. Accordingly, the appeal of the 4th defendant-appellant is dismissed. There is no appeal filed by the 1st and 2nd defendants. Hence, the notice of appeal filed by the 1st and 2nd defendants are rejected.

Registrar is directed to send the original record back to the District Court of Puttlam after keeping the record in this Court for a period of two months. No costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

WC/-