

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

**CA 843/98 F**

DC Kegalle 3410/L

Mohamad Azeez Sithy Nairne  
Wilpola,  
Aranayaka.

**1st Substituted - Plaintiff-Respondent**

**-Vs-**

Ginigamayalage Marathelis  
No: 321,  
Bazar Hotel,  
Dippitiya,  
Aranayake.

**Defendant- Appellant**

**C.A. No: 843/98(F)**

**D.C. Kegalle 3410/L**

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

**Counsel** : Upali Z. Gunawardena with Nimal  
Muthukumarana for the Defendant-  
Appellant.

M.S.A. Saheed with Purnika  
Hettiarachchi for the Plaintiff-Respondent.

**Argued &**  
**Decided on** : **26.02.2013**

**K.T. Chitrasiri, J**

This is an appeal seeking to set aside the decision dated 25.09.1998 of the Learned District Judge of Kegalle. At the out set, Mr.Upali Gunawardena brings to the notice of court that the aforesaid decision dated 25.09.1998, is titled as “order and the reasons for the order”, by the Learned District Judge. He further submits that the learned District Judge had failed to answer the issues that were raised at the commencement of the trial. Accordingly, learned Counsel submits that the decision that is being challenged cannot be considered as a judgment in terms of Section 187 of the Civil Procedure Code.

Section 187 of the Civil Procedure Code reads thus:

*“The Judgement shall contain a concise statement of the case, **the points for determination, the decision thereon, and the reasons for such decision** ..... “*

The said Section requires the Court to identify the points for determination and to have clear answers to those points that need determination. It is a *sine quo non* of a judgment.

Upon perusal of the impugned judgment, it is clear that the learned District Judge has failed to answer the points for determination that were suggested by the parties which had been accepted by Court on the 20.10.1989. There are 11 points for determination (issues). Learned Trial Judge has not given specific answers to those issues. Therefore, it is my opinion that the learned District Judge has failed to comply with Section 187 of the Civil Procedure Code. In the circumstances, I set aside the judgment dated 25.09.1998.

At this stage, it must be noted that the aforesaid decision of this Court is made particularly due to the omission on the part of the learned District Judge. Parties to an action should not be penalized for such errors. Therefore, the District Judge who is sitting at the District Court of Kegalle presently, is directed to . the possibility of

adopting the evidence that has already been recorded in this case and thereafter to write the judgment, if the parties do not have any objection to adopt the evidence.

However, if the learned District Judge is of the view that it is desirable to have the evidence recorded afresh, he is at liberty to do so without adopting the evidence already been recorded.

For the aforesaid reasons, this appeal is allowed without costs. Learned District Judge is directed to hold a re-trial and to take up this case expeditiously.

***Appeal allowed without costs.***

**Judge of the Court of Appeal**

Na/-