

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

C.A. No. 1272/98(F)

D.C.Galle No. 10934/L

D.A. Somawathi
Dole gedara Watta,
Kodagoda.

Plaintiff- Appellant

Vs.

T. Nihal
Dole gedara Watta,
Horadugoda.

Defendant- Respondent

C.A. No. 1272/98(F)

D.C.Galle No. 10934/L

BEFORE : K.T. CHITRASIRI, J.

COUNSEL : S. N. Vijithsingh for the plaintiff-appellant
Defendant-respondent is absent and
unrepresented.

ARGUED AND

DECIDED ON : 08th March, 2013

K.T. CHITRASIRI, J.

The Registrar of this Court had issued notices under registered cover on several occasions to the defendant-respondent directing him to be present in this Court for the purpose of proceeding with this appeal. Those notices had not been returned. The respondent had not responded to those notices. Therefore this appeal is taken up for hearing in the absence of the defendant-respondent.

At this stage learned Counsel for the plaintiff-appellant submits that the land referred to in the schedule to the amended plaint dated 06th December 1989 which is the subject matter of this action had

been acquired by the State. He further submits that an inquiry is being held by the acquiring officer pursuant to the said acquisition. Therefore he informs Court that the appellant is not interested in pursuing this appeal now, since no purpose is served by having the defendant-respondent ejected from the land in dispute. In the circumstances he moves to withdraw this appeal.

Learned Counsel for the appellant brings to the notice of Court that the learned District Judge had not made a decision as to the title of the land. Therefore, he further moves Court to make a direction to the acquiring officer to consider the merits of the individual claims of the parties at the inquiry to be held under the Land Acquisition Act.

Application of the learned Counsel for the appellant to withdraw this appeal is allowed. Accordingly the appeal is dismissed without costs.

Having perused the judgment of the learned District Judge, it is clear that he had neither accepted the title claimed by the plaintiff nor has he accepted the prescriptive claim of the defendant.

Therefore this Court makes an order to the acquiring officer to consider the respective claims of the parties when determining the ownership of the land subjected to this case if an inquiry is being held under the Land Acquisition Act . Subject to the above variation this appeal is dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Kwk/=