

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

CA 326/98/F

D.C. Colombo 4905/SPL

D.W.S. Sumitha Padmini
No. A/4,
Municipal Market,
Colombo 03.

PLAINTIFF

- Vs-

The Colombo Municipal Council
Town Hall,
Colombo 07.

DEFENDANT

AND NOW

D.W.S. Sumitha Padmini
No. A/4,
Municipal Market,
Colombo 03.

PLAINTIFF -APPELLANT

- Vs-

The Colombo Municipal Council
Town Hall,
Colombo 07.

DEFENDANT-RESPONDENT

C.A 326/98 (F)

D.C.Colombo Case No: 4905/SPI

Before : K.T.Chitrasiri, J.

Counsel : Shantha Jayawardena for the Plaintiff -Appellant.
C.Nillanduwa for the Defendant-Respondent.

Argued &

Decided on : 13.03.2013.

K.T.Chitrasiri, J.

Heard both Counsel in support of their respective cases. This is an appeal seeking to set aside the judgment dated 03.02.1998. By that judgment learned District Judge of Colombo dismissed the plaint with costs. The said dismissal of the action is on the basis that the cause of action of the Plaintiff had been prescribed in terms of Section 307 (2) of the Municipal Council Ordinance.

It is to be noted that the date on which the action was dismissed has been the date fixed to pronounce the order on the application made for an interim injunction. Without delivering the order as to

the said application for an interim injunction, learned District Judge dismissed the main action, filed by the Plaintiff.

At this stage, both Counsel agree that no opportunity was given for both the parties, either to call witnesses or to make their submissions, on the issue of prescription. In fact no issue had been framed at all in order to determine the question of prescription. Without doing so, no party could call witnesses or make submissions in support of their respective cases as to the question of prescription.

Therefore, it is clear that the learned District Judge has been misdirected himself when he dismissed the action on the issue of prescription without affording an opportunity for the parties to call witnesses on their behalf or to make submissions. Indeed, it is always desirable to allow the parties to call witnesses in determining issue of prescription since it may involve facts, particularly as to the date of commencement of a particular cause of action.

For the aforesaid reasons the judgment dated 03.02.1998 of the learned District Judge of Colombo is set aside. No party is entitled to the costs of this appeal.

Learned District Judge of Colombo is directed to proceed with the action upon delivering the order with regard to the application for an interim injunction.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Vkg/-