

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

Sudasin Achchige Gunapala,  
No. 63, Ketakalapitiya,  
Debahera.

C.A. No. 1276 / 2000 F  
D.C. Gampaha No. 33183/L

Plaintiff

**Vs.**

Ilandari Pedige Nimal Karunaratne,  
No. 1/63, Ketakalapitiya,  
Debahera.

Defendant

**AND**

Ilandari Pedige Nimal Karunaratne,  
No. 1/63, Ketakalapitiya,  
Debahera.

Defendant Petitioner

Sudasin Achchige Gunapala,  
No. 63, Ketakalapitiya,  
Debahera.

Plaintiff Respondent

**And Now Between**

Ilandari Pedige Nimal Karunaratne,  
No. 1/63, Ketakalapitiya,  
Debahera.

Defendant Petitioner-Appellant

**Vs**

Sudasin Achchige Gunapala,  
No. 63, Ketakalapitiya,  
Debahera.

Plaintiff Respondent-Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Sunil Jayakody for the Defendant Petitioner  
Appellant.

: Romesh Samarakkody for the Plaintiff  
Respondent-Respondent

ARGUED ON : 15.02.2013

DECIDED ON : 15.05.2013

UPALY ABEYRATHNE, J.

The present appeal has been preferred by the Defendant Petitioner-Appellant (hereinafter referred to as the Appellant) from an order made by the

learned Additional District Judge of Gampaha dated 09.11.2000. The facts of the case are briefly as follows;

The Plaintiff Respondent-Respondent (hereinafter referred to as the Respondent) instituted an action against the Appellant in the District Court of Gampaha seeking a declaration of title to the land described in the schedule to the plaint. On 14.10.1997 when the case was taken up for trial the Appellant was absent before Court and the Attorney At Law for the Appellant has informed Court that he has no instruction to appear and defend the case. Accordingly on an application made by the Respondent the learned District Judge has fixed the case for an ex-parte trial.

Thereafter an ex-parte trial had been held on the same date and an ex parte judgement also had been pronounced on the same date and a decree has been entered accordingly. Thereafter a copy of the said ex-parte decree had been served on the Appellant. Upon the receipt of the said the ex-parte decree the Appellant has preferred an application under section 86(2) of the Civil Procedure Code (CPC) seeking to have the said ex-parte judgement and the decree vacated. The learned District Judge after inquiry has dismissed the Appellant's said application.

At the inquiry the Appellant has given evidence and has led the evidence of 03 witnesses. The Respondent too has given evidence and has led the evidence of 01 witness.

The Appellant's position at the inquiry was that on the day before the date of trial he went to Galewela as usual for the purpose of buying chillies and on his way back the lorry broke down. Thereafter the lorry was repaired on the

following morning and came back to Nittambuwa at about 5.00 p.m. and at that time he came to know from his Attorney At Law that the case was heard ex parte.

The Respondent denying the Appellant's said story has stated in evidence that the Appellant was usually doing business in Nittambuwa fair on every Tuesday and on the date of trial too, that being a Tuesday, he saw the Appellant was going to Nittambuwa fair for business. The Appellant's witness Asilin Nona in her evidence has stated that on the date in question she saw the Appellant was selling goods at Nittambuwa fair. It should be noted that the Respondent even in his evidence at the ex parte trial on 14.10.1997 has stated that on the same day morning he saw the Appellant was going to Nittambuwa fair for business.

No doubt that in an Application to vacate an ex parte decree which had been entered against a party for default of appearance the burden is on the affected party to satisfy Court that he had reasonable grounds for such default. If the Affected party fails to give a valid reason an ex parte decree entered in default of such party will not be vacated.

When I consider the evidence led at the inquiry I am of the view that the Appellant has failed to adduce reasonable grounds for default of appearance of the Appellant on the date of trial. Hence I see no reason to interfere with the order of the learned District Judge dated 09.11.2000. Therefore I dismiss the appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal