

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

C.A. No: 899/98(F)

D.C.Kurunegala No:4934/L

(Deceased) Jayalath Dharamaratne,

Dilshan Manjula Jayalath,

Ilandarige Karunawathi,

Both of

Samagi Mawatha,

Jayanthipura,

Kurunegala.

Vipula Menaka Jayalath,

Samagi Mawatha,

Jayanthipura,

Kurunegala.

Defendant - Appellant.

Vs.

Ethugalge Nelson Jayaratne,

Hewanamada,

GonnaKohilagedera.

Plaintiff- Respondent.

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

Counsel : Jacob Joseph for the 2nd and 3rd Substituted Defendant-Appellants.

Kamal Nissanka for the Plaintiff- Respondent

Argued &
Decided on : 02.05.2013

K.T.Chitrasiri, J

Mr. Jacob Joseph submits that the plaint in this case is filed to obtain a declaration of title to a land to which the plaintiff claims title by Deed bearing No.7701 dated 07.10.1993. However he further submits that the judgment in this case had been delivered on the basis of a deed bearing No.7702 dated 07.10.1993. Therefore his contention is that the judgment is ex -facie wrong since the impugned order is not in relation to the land claimed in the plaint.

However, this appeal is to set aside the order dated 29.05.1998 wherein the learned District Judge made order in respect of an application made under Section 86 of the Civil Procedure Code. Hence, this appeal is not to challenge the judgment which according to Mr. J.Joseph is erroneous. Therefore this Court

is unable to look into the merits of the judgment since no appeal is before this Court challenging the said judgment.

Having considered the above circumstances, Mr. Jacob Joseph moves to withdraw this appeal reserving his right to file an action to vindicate the title of the plaintiff that derived under the Deed bearing No.7701. Counsel for the Respondent has no objection to this application.

Application for withdrawal of the appeal is allowed. Accordingly, appeal is dismissed reserving the rights of the plaintiff to file an action to vindicate her rights derived from the Deed bearing No.7701 dated 07.10.1993.

Appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

KLP/-