

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

Koswatta Muhandiramge Haringtan  
Thamel,  
Karungalacholai,  
Mundalama.

C.A. No. 1350 / 2000 F  
D.C. Puttalam No. 650/L

**Plaintiff**

**Vs.**

Koswatta Muhandiramge Alexandre  
Thamel,  
Karungalacholai  
Mundalama.

**Defendant**

**AND**

Koswatta Muhandiramge Alexandre  
Thamel,  
Karungalacholai  
Mundalama.

**Defendant Petitioner**

Koswatta Muhandiramge Haringtan  
Thamel,  
Karungalacholai,  
Mundalama.

**Plaintiff Respondent**

**And Now Between**

Koswatta Muhandirange Alexandre  
Thamel,  
Karungalacholai  
Mundalama.

**Defendant Petitioner-Appellant**

**Vs**

Koswatta Muhandirange Haringtan  
Thamel,  
Karungalacholai,  
Mundalama.

**Plaintiff Respondent-Respondent**

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : I.C.M. Azwer Defendant Petitioner Appellant.  
: Nevil Abeyrathne with Sisira Munasinghe for  
the Plaintiff Respondent-Respondent

ARGUED ON : 18.03.2013

DECIDED ON : 05.09.2013

UPALY ABEYRATHNE, J.

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

learned District Judge of Puttalam dated 05.12.2000. The facts of the case are briefly as follows;

The Plaintiff Respondent-Respondent (hereinafter referred to as the Respondent) instituted the said action against the Appellant seeking to recover the possession of the land described in the schedule to the plaint on the basis that he was the permit holder of the land described in the schedule to the plaint under a land permit granted by the State. The Appellant has filed an answer denying the averments contained in the plaint and praying for a dismissal of the Respondent's action.

When the case was taken up for further hearing on 03.11.1997 the Appellant was absent and the case had been fixed for an Ex Parte trial. Thereafter the ex-parte trial had been held on the same date and an ex-parte decree had been entered accordingly. Thereafter the Appellant had preferred an application under section 86(1) of the Civil Procedure Code (CPC) seeking to have the said ex-parte judgement and the decree vacated. The learned District Judge after inquiry had dismissed the Appellant's said application by the said order dated 05.12.2000.

The Appellant's position at the inquiry in to purge default was that according to his memory he was bitten by a spider in the month of September, 1997 and thereafter he was under medical treatments for 3 to 4 months. In support of that the Appellant has produced a medical certificate issued by a native doctor. According to the said medical certificate the Appellant had been under medical treatment from 02<sup>nd</sup> of September 1997 to end of September, 1997.

It seems that said evidence has not covered the said date on which the case was fixed for an Ex-Parte trial. In the circumstances I see no reason to interfere with the order of the learned District Judge dated 05.12.2000. Therefore I dismiss the appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal