

IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRILANKA

Kelaniya Sumangala Dharma Sri Sil  
Matha,  
C/o Mrs Kariyawasam,  
18/3, Eksath Mawatha,  
Mahara, Kadawatha.

PLaintiff

C A 700 / 2000 (F)

**Vs.**

D.C. Colombo No. 18285/MR

Seethawakage Premarathna alias  
Premarathna Seram,  
N0. 63, Molawatta,  
Sinharamulla, Kelaniya.

Defendant

**NOW BETWEEN**

Kelaniya Sumangala Dharma Sri Sil  
Matha,  
C/o Mrs Kariyawasam,  
18/3, Eksath Mawatha,  
Mahara, Kadawatha.

Plaintiff Appellant

**Vs.**

Seethawakage Premarathna alias  
Premarathna Seram,  
N0. 63, Molawatta,  
Sinharamulla, Kelaniya.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.  
COUNSEL : U. De Z. Gunawardena for the Plaintiff Appellant  
Ms. F. Musthafa for the Defendant Respondent  
ARGUED ON : 05.12.2013  
DECIDED ON : 10.12.2013

UPALY ABEYRATHNE, J.

When this case was taken up for trial on 09.06.2000 the parties had agreed to try issue No 10 as a preliminary issue on law. The Respondent had raised the said issue on the basis that the Appellant's action was prescribed in law. The learned Additional District Judge upon the written the submission of the parties has dismissed the Appellant's action. This appeal has been preferred from the said order dated 11.09.2000.

The learned counsel for the Appellant submitted that the learned Additional District Judge has misdirected himself with regard to the date of institution of the action.

It seems that the learned Additional District Judge has reached to the said conclusion on the basis that the cause of action has accrued on 11<sup>th</sup> of September 1994 and the action has been instituted on 16 of December 1996. In this regard the learned counsel for the Appellant submitted that the assumption of the learned Additional District Judge was wrong and in fact the Appellant had instituted the said action on 24<sup>th</sup> of July 1994 and therefore the action had been filed within time and it was not time-barred. In proof of this fact the learned counsel for the Appellant has produced a certified copy of the Institutions Register

of Civil Cases of the District Court of Colombo marked 'X'. According to the said Register the action had been filed on 24<sup>th</sup> of July 1996.

As submitted by the learned counsel for the appellant, it was evidence from the Journal Entry no 02 that after the institution of the said action the case record had been misplaced and thereafter the case record had been re-constructed on 16.12.1996 and the re-constructed case record had been submitted to the learned Additional District Judge for an order on 18.01.1996. Accordingly on 10.01.1997 an order has been made for the issuing of summons.

It is clear from the said facts that the action had been instituted on 24.07.1996 and after the institution of the action the case record had been misplaced and therefore a case record had been re-constructed on 16.12.1996. But the learned Additional District Judge has not considered the said facts in deciding the correct date of institution of the action. He has thought that 16.12.1996 was the date of institution of the action. The date of re-construction of the case record cannot be considered as the date of institution of the action.

In the said circumstances I hold that the action of the Appellant is not time-barred. Hence the issues No. 10 and 11 should be answered in the negative. Therefore I set aside the said order of the learned Additional District Judge dated 11.09.2000 and allow the appeal of the appellant with costs. The Registrar of this Court is directed to send the case record back to the District Court of Colombo for trial. The learned District Judge is directed to hear and conclude the case expeditiously according to law.

*Appeal allowed.*

Judge of the Court of Appeal