

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

CA 1298/98 (F)

D.C. Galle Case No. 7556/P

H.D. Perera
Gammadda,
Kottawagama,
Yakkala Mulla,
Galle.

Appellant

Vs.

W.K. Amarasena
Gammadda,
Kottawagama,
Yakkala Mulla.

Respondent

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

Counsel : Sandamal Rajapakshe for the 1st Defendant-Appellant/Substituted Plaintiff.

Athula Perera for the 3A Defendant-Respondent.

Argued &

Decided on : 20.01.2014.

K.T. CHITRASIRI, J.

Learned Counsel for the 3A Defendant-Respondent submits that the appellant cannot, in law proceed with this appeal since the appeal had been filed not against a final order but it is against an interlocutory order. Admittedly the impugned decision made on the 04.11.1998 is an order refusing an application by the 1st Defendant who is also the Substituted Plaintiff, to prepare a Plan instead of the preliminary plan that had already been filed. Furthermore, except for the part of the Surveyor's evidence, not even the Plaintiff's evidence had been recorded. Hence, the impugned order is clearly not a final order. In such a situation no final appeal could have been preferred in terms of Section 754(2) of the Civil Procedure Code. The appellant should have had first

obtained leave of this Court under the said Section 754(2) before proceeding with the appeal.



Therefore, it is seen that the appellant has chosen a wrong procedure in filing this appeal. Accordingly, this appeal cannot be maintained. For the aforesaid reasons this appeal is dismissed without cost.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL.

Mm/-.