

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

Dombawela Dhammika Thero,  
Viharadhipathy and Trustee of  
Kolawenigama Rajamaha Vihara,  
Kolawenigama.

C.A. No. 255 / 2000 F  
D.C. Matara No. 5904/L

Plaintiff

**Vs.**

Manikpurage Kirineris,  
Mavuldeniya,  
Kolawenigama.

Defendant

**AND**

Manikpurage Kirineris,  
Mavuldeniya,  
Kolawenigama.

Defendant Petitioner

Dombawela Dhammika Thero,  
Viharadhipathy and Trustee of  
Kolawenigama Rajamaha Vihara,  
Kolawenigama.

Plaintiff Respondent

**And Now Between**

Manikpurage Kirineris,  
Mavuldeniya,  
Kolawenigama.

Defendant Petitioner-Appellant

Vs

Dombawela Dhammika Thero,  
Viharadhipathy and Trustee of  
Kolawenigama Rajamaha Vihara,  
Kolawenigama.

Plaintiff Respondent-Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Rohan Sahabandu PC for the Defendant  
Petitioner Appellant.  
: W. Withanachchi for the Plaintiff Respondent-  
Respondent

ARGUED ON : 26.11.2013

DECIDED ON : 05.03.2014

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 Matara dated 19.04.2000. 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 a declaration of title and to recover the possession of the land described in the schedule to the plaint on the basis that the said land was belonged to the said temple. The Appellant has filed an answer denying the averments contained in the plaint and praying for a dismissal of the Respondent's action.

After the institution of the action a survey plan had been made on an application made by the Respondent and thereafter an amended plaint had been filed on 07.01.1993. Thereafter the Appellant had made an application to file an amended answer. In the meantime on 13.01.1994, the Appellant had tendered commission papers in order to prepare a survey plan and it had been issued to M.A.S. Premaratne, Licensed Surveyor. Since the said Surveyor had declined the said commission had been re-issued to another Surveyor. Thereafter the case had been calling in open court for several years for the purpose of taking necessary steps to re-issue the commission. It was apparent from the Journal Entries No 57, 58, 59 and 60 dated 08.05.1997, 09.10.1997, 27.11.1997 and 05 03.1998 respectively that the Appellant had failed to deposit a survey fee of Rs 1000/- in order to re-issue the said commission to a Surveyor.

On 05.03.1998 when the case was called in open court for the said purpose the Appellant was absent and the Attorney At Law of the Appellant had informed court that he had no instruction. Accordingly the case had been fixed for an Ex Parte trial. Thereafter on 14.10.1998 an ex-parte trial had been held 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 vacate the said ex-parte judgement and the decree. The learned District Judge after inquiry had dismissed the Appellant's said application by the said order dated 19.04.2000.

The Appellant contended before this Court that he was not given an opportunity to lead evidence to purge default. I now advert to the said submission. It is clear from the proceedings of the case that the impugned order had been made upon the written submissions of the parties. It is seen from the Journal Entry No 65 dated 10.05.1999/11.05.1999 that the Appellant has tendered a petition supported with an affidavit seeking to vacate the ex-parte decree entered against him. It is also seen from Journal Entries No 66, 67 and 68 that the Respondent has been given an opportunity to file objections and also the Appellant to file counter affidavits. Thereafter it seems from Journal Entries No 69 and 70 that both parties have filed their written submissions. It is further apparent from the said Journal Entries that the Appellant has not made any application to lead evidence on his behalf.

It seems that thereafter the learned District Judge has decided the matter upon the available materials of the case. It is clear from the said documents of the Appellant (petition and affidavit) that the Appellant has failed to explain the delay to the satisfaction of the court. No doubt that the Appellant has failed to take necessary steps for the purpose of defending the case against him. Hence I see no reason to interfere with the order of the learned District Judge dated 19.04.2000. Therefore I dismiss the appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal