

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

C.A 641/98 F

D.C Marawila Case No: 169/M.

Rathna Hettiarachchi
No: 139,
Mihidu Mawatha,
Colombo 12.

Petitioner

-Vs-

M.K. Saimon Fernando
"Sada Niwasa",
Waikkala.

Respondent

C.A 641/98 F.**D.C Marawila Case No: 169/M.**

BEFORE : K.T. Chitrasiri, J.
 COUNSEL : J.P. Gamage with Rasika Wellappili for the
 Defendant-Appellant.
 Plaintiff-Respondent is absent and unrepresented.

ARGUED &

DECIDED ON : 09.06.2014.

K.T. CHITRASIRI, J.

Plaintiff -Respondent is absent and unrepresented. Registrar of this court has sent several notices under registered cover to the Plaintiff -Respondent and to his Attorney -at -Law informing them to be present in this court. When this appeal was taken on the last occasion it has been recorded that the notice sent to the Plaintiff -Respondent had been returned. The said notice and the cover in which this notice was sent to the Respondent, is filed into the docket and it is marked as page No: (13). The envelop filed with the said notice also is found in the docket and on the reverse of this envelop it is mentioned that the addressee, namely the Plaintiff has left the given address and the premises given in the address is closed. The notice sent to his registered Attorney R.M.S Rajapakshe has not been returned. Accordingly, this appeal is taken up for hearing in the absence of the Plaintiff -Respondent.

Heard the learned counsel for the Appellant. This is an appeal seeking to set aside the judgement dated 06.10.1998 of the learned District Judge of Marawila. By that judgment, the learned District Judge decided that the Plaintiff-Respondent is entitled to the reliefs that he has prayed for, in the plaint dated 22.11.1985. The reliefs so prayed in the plaint are to recover a sum of Rs.61,513/- and the legal interest accrued thereto. The aforesaid claim of the Plaintiff-Respondent has been made on the basis that the Defendant has failed to pay the money for the building material supplied by the Plaintiff to the Defendant-Appellant. In the plaint it is also stated that the Defendant Appellant was in arrears in a sum of Rs. 61,513/- for the supply of the said building material. The Plaintiff in his evidence has stated the manner in which he sold the building material to the Appellant. Finally, he has stated that the Appellant owed him Rs. 50,513/- as the balance money for the goods that the Respondent has sold to the Appellant. (Vide proceedings at page 96 in the appeal brief.) In support of his claim he has marked the documents P1 to P15.

The Appellant in his evidence has stated that he was prepared to pay the money due to the Respondent (Vide the proceedings of page 125 in the appeal brief). His position was that the goods that was purchased was not for him but it was for the company in which he was a director. The aforesaid position had been rejected by the learned District Judge. This action had been filed in the name of the Defendant-Appellant in his personal capacity. Therefore, I do not see any error in rejecting the said

defence taken up by the Appellant. Accordingly, it is seen that the learned District Judge has carefully considered the evidence of both parties and decided the case in favour of the Respondent having assigned the reasons thereto.

Even though the Appellant has taken up the defence of prescription in his answer dated 23.02.1989, he has failed to raise an issue to that effect at the trial. Therefore the merits of the said defence of prescription cannot be considered at this appeal stage since it involves a question, mixed with facts and the law. (Talagola V. Gangodawila Co-operative Stone Society 48 NLR 472, Jayawickrama V. David Silva 76 NLR 427, Dassanayake V. Eastern Produce and Estates Co-Ltd 1986 (1) SLR 258). Accordingly, I do not see any error in the findings of the learned District Judge. For the aforesaid reasons this appeal is dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL.

Vkg/-.