

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

In the matter of an Appeal under Section
755 of the Civil Procedure Code.

Isuku Lebbe Hamidu Lebbe of
Watdeniye, Watthegethera
Delahanga, Gelioya.

Plaintiff

C.A. Case No. 679/97(F)

Vs

D.C. (Kandy)

A.V. Premarathna of 69 Peradeniya

Case No. 17603/L

Road, Karamada, Gelioya.

Defendant

AND NOW

Isuku Lebbe Hamidu Lebbe of
Watdeniye, Watthegethera
Delahanga, Gelioya.

Plaintiff – Appellant

Vs.

A.V. Premarathna of 69 Peradeniya

Road, Karamada, Geliya.

Defendant - Respondent

BEFORE : **P.W.D.C. JAYATHILAKE, J**

COUNSEL : **M.I. Hadiwith B. Gamagefor**
the Plaintiff Appellant.

RavindraAnawaratne for the

Defendant Respondent.

ARGUED ON : **17.12.2014**

DECIDED ON : **13.07.2015**

P.W.D.C. Jayathilake, J

The Plaintiff instituted this action in the District Court of Kandy praying for a declaration of title to the land described in the schedule of the plaint and to eject the Defendant Respondent and those who hold under him from the said land. He has averred in this Plaint that the Plaintiff and his two daughters, became the owners of the two lands described in the schedules A and B of the Plaint and the premises described in the schedule B had been given on rent to the Defendant.

The course of action, according to the Plaint, is non payment of the rent for a period of two years and dispute the title of the Plaintiff.

Even though, the defendant has not directly admitted that he is the tenant of the premises, he has alleged that the plaint is bad in law as the contract of tenancy has not terminated in terms of the provisions of the Rent Act. As the defendant was absent on the date fixed for

trial, the case has been fixed for ex parte trial. The Plaintiff giving evidence in ex parte trial has marked the deeds to prove his title to the land described in schedule B of the Plaint and pleaded for the Judgment of declaration of title. But in his evidence, he has not disclosed any course of actions against the Defendant. However, the learned Additional District Judge has delivered an ex parte judgment in favour of the Plaintiff declaring the title of the Plaintiff to the land described in the schedule B of the Plaint. It has been stated in the judgment that the Plaintiff is the Land Lord and the Defendant is the Tenant, according to the evidence of the Plaintiff, though the Plaintiff has not stated things of that kind in his evidence. However, the learned Additional District Judge had been of the view that the Defendant was not entitled to ask for an ejection against the Defendant as a Quit Notice had not been served on the Defendant.

This is an Appeal against the said Ex parte Judgment preferred by the Plaintiff Appellant. There is no right of Appeal against the Ex parte Judgment under the Provisions of the Civil Procedure Code. But, it is settled law now that a Revision under the Revisionary Jurisdiction of

the Court of Appeal. This court sees no reason to interfere with the Exparte Judgment even in exercising the Revisionary Jurisdiction. It appears that not only the Plaintiff, but also the evidence of the Plaintiff has not presented a formal Action. Therefore, this court dismisses the Appeal without cost.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL