

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

Alahakoon Mudiyansele Jyaratne  
Banda  
No. 58, Yaya 29,  
Attanakadawatha.

**Defendant-Appellant**

**C.A. No. 569/97**

**D.C. Polonnaruwa No. 6427/L**

**Vs**

Alahakoon Mudiyansele Podi  
Menika  
"Saman Sevana",  
No. 58, Yaya 29  
Attankanadawatha.

**Plaintiff-Respondent**

**BEFORE**

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

**COUNSEL**

: Rakitha Abeysinghe with

Nadeeshan Zoysa for the

Defendant-Appellant

Iranga Perera with Laknath

Seneviratne for the

Plaintiff - Respondent.

**ARGUED ON**

: 14<sup>th</sup> July, 2015

**DECIDED ON**

: 03<sup>rd</sup> December, 2015

**Deepali Wijesundera J.**

The plaintiff-defendant has filed an action for declaration of title and ejectment of the defendant-appellant from the land described in the schedule to the plaint in the District Court of Polonnaruwa. The defendant-appellant was absent and unrepresented in court, on the summons returnable date and the case was fixed for ex parte trial. After the conclusion of the ex parte trial the decree was served on the defendant-appellant. The defendant-appellant has filed a proxy and then has moved for time to file their papers to vacate the ex parte decree. The learned District Judge after considering the submissions made on behalf of both parties has refused the defendant-appellant's application

stating that the said application did not comply with the mandatory requirements of the period stipulated in *Sec. 86 (2) of the Civil Procedure Code* to purge default for non appearance.

The defendant-appellant in the submissions made to the District Court has stated that he did not receive the summons sent to him. The appellants in their application to this court stated that the learned District Judge had no jurisdiction to quash and nullify or cancel a deed granted on a "Swarna Bhumi" deed by the President of Sri Lanka. The land in issue is a land granted by a Swarna Bhumi deed. This grant has been marked as X.

On perusal of the journal entries in the District Court case record it can be seen that by the first journal entry itself it has been stated that summons were served on the defendant, on the next date the case has been fixed for ex parte trial. The ex parte decree was served on the defendant-appellant on 20/06/1996 according to the fiscal's report. Journal entry of the case record does not indicate the date the decree was served, but in the same journal entry it is stated that the defendant has filed his proxy, journal entry 12 states all these but there is no date to say on which date all these were submitted to court. There is another minute which says proxy filed call on 04/10/1996. This journal entry is very confusing and not clear. By that journal entry after the defendant-

appellant's proxy was filed a date has been given by court without mentioning for what the date is been given.

The order of the learned District Judge dated 04/06/1997 which the appellant is seeking to set aside states;

*“විත්තිකරුට තීන්දු ප්‍රකාශය ඔර දී ඇත්තේ 1996.06.20 දින දීය. එහෙත් විත්තිකරු එදින සිට දින 14ක් ඇතුළත එනම් 1996.07.04 දින හෝ එදිනට ප්‍රථම විත්තිකරු අධිකරණයට ඉදිරිපත් වී තම ඉල්ලීම ඉදිරිපත් කර නොමැත. 1996.07.05 වැනි දින විත්තිකරු පෙරකලාසිය පමණක් ගොනු කර ඇති අතර 1996.10.04 දින විරෝධතා සහ දිවිරුම් පෙත්සමක් ඉදිරිපත් කර ඇත”.*

According to his findings the defendant-appellant has filed a proxy a day after the given date. This filing of the fiscal's report and the proxy has been done on the same day according to this journal entry. If it is so then the date should be not 05/07/96 as stated by the District Judge but 01/07/96 as stated by the fiscal's report.

The learned District Judge without going into the documents has merely depended on the submission of the plaintiff-respondent. There has been a grave miscarriage of Justice by the District Judge according to the journal entries. The District Judge himself has accepted the proxy

and given a date for the defendant to file his paper, and later gone back on his own order.

**Sec. 86 (3) of the Civil Procedure Code states;**

*“Every application under this section shall be made by petition supported by affidavit”.*

The learned District Judge should have acted under this at the time he accepted the proxy of the defendant. The District Judge has misdirected himself and come to the wrong conclusion which in turn has denied the defendant his rights to intervene in the District Court case.

For the afore stated reason the order dated 04/06/97 of the District Judge of Polonnaruwa is set aside. The District Court is directed to allow the defendant-appellant to file his answer. The appellant's application is allowed.

**JUDGE OF THE COURT OF APPEAL**

**M.M.A. Gaffoor J.**

I agree

**JUDGE OF THE COURT OF APPEAL**