

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

Court of Appeal Case no: CA/TR/08 /2017

District Court Kaduwela Case no: 313/Land

1. Ubaya Narayanage Chandrani Charlotte
495, Kandy Road, Mahara, Kadawatha.

2. Kotte Acharige Shantha Kumara alias
Shantha Kumara Kottege
495, Kandy Road, Mahara, Kadawatha.

Plaintiffs

Vs.

Kotte Acharige Anura Sarath Kumara
112/3, Rosmead Place, Colombo 07.

Defendant

And Now between

1. Ubaya Narayanage Chandrani Charlotte
495, Kandy Road, Mahara, Kadawatha.

2. Kotte Acharlge Shantha Kumara alias
Shantha Kumara Kottege
495, Kandy Road, Mahara, Kadawatha.

Plaintiff-Petitioners

Vs.

Kotte Acharige Anura Sarath Kumara
112/3, Rosmead Place, Colombo 07.

Defendant-Respondent

CA/ TR/08/2017

D.C. KADUWELA 313/LAND

**BEFORE: VIJITH K. MALALGODA, P.C.J (P/CA) &
S. THURAIRAJA, P.C.J.**

COUNSEL: Lakshan Dias with Mrs. J. Jayasuriya for the Plaintiff-Petitioners.

N. Jayamanna PC with N. Amarasinghe instd. by A. Nepalaarachchi for the Defendant-Respondent.

**ARGUED &
DECIDED ON:** 04.05.2017.

VIJITH K. MALALGODA, P.C.J (P/CA)

Heard learned Counsel for the Plaintiff-Petitioners and the Counsel for the Defendant-Respondent. Plaintiff-Petitioners have come before this Court seeking an order under Section 46 of the Judicature Act for a transfer of a matter pending before the District Court of Kaduwela. As observed by this Court the petitioner's main argument before this Court was based on pre-payment cost ordered by the learned District Judge when the matter was fixed for argument before the said Court on 25.01.2017. However, in this regard we observed that the learned District Judge after making an order for Rs. 100,000/- to be paid as pre-payment cost had thereafter reduce the amount to Rs. 25,000/-. As submitted by the learned Counsel for the Defendant-Respondent, it is her Senior Counsel who made the application for pre-paid cost before the District Court. In these circumstances, it is observed that making an order for pre-payment of cost on a trial date alone cannot consider a ground to transfer a case since the said act is insufficient to establish that a fair and impartial trial cannot be taken up before the said District Judge. As further observed by this Court the plaintiff-petitioners have made an application to lay by the proceedings in

the District Court until the Criminal Proceedings are completed before the High Court of Colombo. The said application was made not before the present District Judge but before his predecessor and when an application was made to vacate the said decision it is the predecessor of the present Judge who overruled the said application and fixed the matter for trial on 25.01.2017. In the said circumstances, we are not satisfied with the material placed before this Court by the learned Counsel for the petitioner to establish that the said conduct of the District Judge of Kaduwela amounts to an act comes within Section 46 of the Judicature Act. In the said circumstances, we are not inclined to issue notices in this matter and notices are accordingly refused.

PRESIDENT OF THE COURT OF APPEAL.

S. THURAIRAJA, P.C.J.

I agree.

JUDGE OF THE COURT OF APPEAL.

Mm/-.