

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

**CA 1088/2000 (F)**

D.C. Polonnaruwa 7273/97 M

Herath Banda

**Petitioner**

**Vs.**

R.M. Upatissa Bandara  
Raththota.

**Respondent**

Before : K.T. Chitrasiri, J.

Counsel : Sandamal Rajapaksha for the Plaintiff-Appellant

Defendant-Respondent is absent and unrepresented

Argued &

Decided on : 30.04.2014

K.T. Chitrasiri, J.

Notice sent by the Registrar to the defendant-respondent directing him to be present in this Court has been returned with the endorsement that the addressee has left the given address. It is to the address of the defendant-respondent which is given in the petition of appeal that the said notice had been sent. Accordingly, this appeal is taken up for hearing in the absence of the defendant-respondent. Heard, the Counsel for the Plaintiff-Appellant.

This is an appeal seeking to set aside the judgment dated 03.10.2000 of the learned District Judge of Polonnaruwa. By that judgment, learned District Judge dismissed the plaint in which the Plaintiff-Appellant (hereinafter referred to as the Plaintiff) claimed Rs. 130,130/- with interest accrued thereto from the Defendant-Respondent. (hereinafter referred to as the Defendant). The aforesaid claim had been made alleging that the said sum of money was due to the plaintiff-appellant pursuant to purchase of paddy by the Defendant. Defendant in

his answer has denied the claim of the plaintiff even though he has admitted that he paid Rs. 10000/- to the Plaintiff. At the commencement of the trial an admission also has been recorded admitting that the Defendant had paid Rs. 10000/- to the Plaintiff. However, the Defendant has taken up the position that the paddy that he has purchased from the Plaintiff was of inferior quality and has framed issues accordingly.

Learned District Judge having considered the evidence decided that the Plaintiff has failed to establish his claim basically due to the non-production of the documents marked P1 and P3 in evidence for him to consider. Only a photo copy of the document P1 had been marked in evidence. When the said photo copy of the document P1 was marked in evidence, the Plaintiff was given another date to produce the original of that document P1. Even on that subsequent date, the original document was not available.

The aforesaid circumstances show that the Defendant has insisted producing the original document even though no objection had been raised when marking the photo copy of the document P1. Hence, it is clear that the photocopy of the document P1 was allowed to mark only for the purpose of proceeding with the trial and the defendant had always insisted to have the original of the document P1 produced in Court. The original document P1 had not been tendered to court at all. It is the

document on which the entire claim of the plaintiff had been relied upon. Hence, without the original of the document P1, the plaintiff's claim fails.

Learned District Judge also has stated that the plaintiff is not in a position to succeed in his claim without producing the document P3 by which the demand alleged to have been made directing the defendant to pay the money due to the Plaintiff. It is correct to state that it is the burden of the plaintiff to establish that he has demanded the money from the defendant before filing action. In this instance such evidence is not forthcoming. The document P3 by which the demand had alleged to have been made had not been tendered to Court.

In the circumstances, it is clear that the learned District Judge is correct when he decided that the plaintiff has failed to establish his claim in the absence of the original document upon which he has based his claim and also without tendering the document marked P3 to prove that he has demanded the money prior to filing of this action. Accordingly, I do not see any error in the findings of the learned District Judge. Hence, I am not inclined to interfere with his decision.

For the aforesaid reasons this appeal is dismissed without costs.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL.

NR/-