

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

**CA (PHC) 170/2005**  
PHC-KANDY-13/2004

M. Layanal Rose Fernando  
No: 186,  
St. Joseph Street  
Negombo.

**Appellants**

**Vs.**

H.I. Premawathi

And Others

**Respondents**

Before : K.T. Chitrasiri, J. &  
P.R. Walgama, J.

Counsel : parties are absent and unrepresented

Argued &

Decided on : 26.01.2015

K.T. Chitrasiri, J.

When this matter was mentioned on the last occasion namely on 01.10.2014, the appellant was represented by P.N.U. Pattiarachchi whilst the 6<sup>th</sup> Respondent-Respondent was represented by Ahamed Thawfeek, Attorneys-at-Law. On their request this matter was fixed for argument for today. However neither the parties nor their Attorneys are present in court today. Therefore, this matter is taken up for argument in the absence of the parties.

This is an appeal seeking to have a re-trial before the learned High Court Judge in Kandy and to have the child by the name of M.Y. Tharindu Fernando produced, it being a writ application in the nature of habeas corpus. However, in the petition dated 17.02.2004, filed in the High Court of Kandy, Petitioner-Appellant has sought inter-alia to execute orders

delivered by the District Court-Kandy and also to have an order in respect of the custody of the said child. Such an application cannot be entertained in an application for Writ of Habeas Corpus particularly when an application is found therein to implement judicial orders made in another action.

Indeed, the documents marked P1 and P6 are two decisions made by the District judges in respect of the custody of the child subjected to in this application. Therefore, it is clear that the High Court has no jurisdiction to entertain this Writ application.

Those matters have not been looked into by the learned High Court Judge since the dismissal of the application by him had been on the questions of procedure followed by the appellant in filing this application.

However, having considered all those matters we are of the view that there is no reason to interfere with the decision of the learned High Court Judge. Accordingly, this appeal is dismissed with costs.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**P.R. Walgama, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**

LA/-