

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

Galhenage Don Shervin Stanislas,
No. 135, Halpe Mawatha,
Kandana.

C.A. No.516/2000(F)
D.C.Negombo-2539/D

Plaintiff- Appellant

Vs.

V. Dona Ruby Diana Padmini Gunasekara,
Samagi Mawatha, Rilaula,
Kandana.

Defendant-Respondent

Before : A.H.M.D. Nawaz, J
&
H.C.J. Madawala, J

Counsel : No appearances

Judgment Date : 28 / 04 /2016

H. C. J. Madawala, J

The plaintiff- appellant has preferred this appeal to set aside the Judgment of the Learned District Judge dated 2000-6-9 and has prayed that the judgment be entered in favor of the plaintiff as prayed in the prayer of the plaint and for cost. The plaintiff instituted this action against the defendant to

obtain a divorce on the basis of the defendant's malicious desertion and to get the custody of the child. The defendant in her answer has denied the allegation levelled against her by the plaintiff and has asked for a dismissal of the plaintiff's actions.

The case proceeded to trial and two admissions and thirteen issues were recorded. Issue No. 14 on behalf of the defendant was not permitted by court after it was objected to on behalf of the plaintiff. Jurisdiction of this court was admitted. The marriage, the fact that there is a child by this marriage, the fact that the defendant had gone abroad in 1989 and she had come back to Sri Lanka on 14th May 1991 are admitted. Issues No. 01 to 06 are on behalf of the plaintiff and the rest on behalf of the defendant. The plaintiff himself, his sister and one Mrs. Monica Abeysekera had given evidence on behalf of the plaintiff and the defendant gave evidence on behalf of herself. Three documents namely, P1, P2, and P3 the marriage certificate and two police complaints made by the plaintiff were marked and led in evidence on behalf of the plaintiff and only one document was marked as D1 for the defence.

The plaintiff position was that he had come to know about his wife's (defendant) affair with one Mr. Karunarathne in Oman and when he questioned the defendant about this she refused to answer and

started to create trouble for him and finally the defendant had maliciously deserted the plaintiff on the 30th June 1991 with the intention of breaking the family life with him. On 25th March 1998 the plaintiff in her evidence had stated that he had advised his wife, the defendant not to go abroad and that she had got annoyed over this also and had packed her belongings and left to the matrimonial house on the 30th of June 1991 when the plaintiff was not in.

The plaintiff made several attempts to get down the defendant to the matrimonial house to continue with the family life peacefully but all in vain due to the defendant's refusal to come back. The plaintiff position was that all this happened due to the defendant's affair with one Mr. Karunaratne and due to that the defendant did not want to continue the family life with him. Accordingly the defendant had maliciously deserted him on 30th June 1991.

The defendant position was that the plaintiff filed the divorce action on 28-5-1993 and three days thereafter on 1-6-1993 married a woman called P.K. Sriyalatha with whom now he lives at Kandana. The plaintiff who is a married person having a woman and a child stated a diabolic falsehood to a public servant that he is unmarried person. She was the defendant given evidence stated that the reason for her being out of the country was on account of economic hardships experienced in the matrimonial home of the plaintiff and the defendant, the spouses decided that the defendant should find employment abroad. The defendant was out of the country and the plaintiff thereafter sought the comfort of another woman at Pinikahana in Elpitiya to avoid being detected of the second marriage. The defendant had prayed as sought relief as prayed in the answer.

The Learned District Judge after trial entered the judgment in favor of the defendant and dismissed the plaintiff action. Being aggrieved by the said judgment of the Learned District Judge the plaintiff preferred this appeal. Notices had been dispatched on the respondent by registered post. However the respondent has been absent and unrepresented. Thereafter this case has been fixed for argument on 7-11-2013. However the appellant has been directed to file written submissions and several dates have been given in this respect.

The case has been re-fixed for argument on 10-2-2014 and written submissions for both parties to be filed on 16-1-2014. However several dates had been given for issue of notice to the defendant respondent and on 18-12-2014 both parties had been absent and unrepresented. On 15-10-2002 counsel for the appellant had agreed to dispose this case by way of written submissions. Thereafter several dates had been obtained for written submissions however on 29-2-2016 counsel for the appellant has failed to file written submissions and appear in court. Thereafter this case has been fixed for judgment on 28-4-2016.

According to Section 769 (2) of the Civil Procedure Code states that, “if the appellant does not appear either in person or by an Attorney-at-Law to support his appeal, the court shall consider appeal and make such order there on as it thinks fit.”

The appellant had failed to file written submissions in support of his appeal as such we find that both parties seem to be not interested in this appeal. However according to the above section as no material is placed before this court to consider the appeal we proceed to act under section 403 of the Civil Procedure Code and abate this appeal without cost.

JUDGE OF THE COURT OF APPEAL

A.H.M.D. Nawaz, J

I agree.

JUDGE OF THE COURT OF APPEAL