

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

C.A. Application No: 724/2000

S.M.Karunawathie
No 22/4 Railway Station
Trincomalee

Defendant-Appellant

Vs.

1. Thilagarajah Theivanayaki
No 381, Main Street,
Trincomalee
2. Sithiravelautham Rasanayaki
No 47 Sea View Road,
Trincomalee
3. Lingasorupan Selvanayaki
47 Sea View Road,
Trincomalee.

Plaintiffs-Respondents

Case No: CA 724/2000 (F)

D.C. Trincomalee Case No.450/DC

BEFORE : A.H.M.D. Nawaz, J

COUNSEL : Lasitha Chaminda for the Defendant-Appellant.

A. Jegasothy for the Plaintiff-Respondent.

ARGUED &

DECIED ON: 27.07.2015

A.H.M.D. Nawaz, J

In this matter by a petition of appeal dated 27.11.2000 the substituted defendant-appellant namely Jayasinghe Manichchige Karunawathi prefers an appeal against the order of the learned District Judge of Trincomalee dated 20.10.2000 wherein the learned District Judge rejected the application made by the substituted defendant-appellant under Section 402 of the Civil Procedure Code.

Before the learned District Judge came to make this order on the 20.10.2000 he had made an order laying by the case because the plaintiff had stated to Court that there was a connected case and the case had been taken off the trial roll. (Please see the journal entry dated 02.03.1998 when the learned District Judge had allowed the application of the plaintiff-respondent to have the case laid by).

Thereafter, on 18.02.2000 the learned Counsel for the plaintiff-respondent had moved the District Court to have the case withdrawn reserving the right to institute a fresh action under Section 406 of the Civil Procedure Code. In respect of this application the Attorney-at-Law for the substituted defendant-appellant preferred his statement of objection and stated that there cannot be an application to file a fresh action since the matter in the District Court had abated by virtue of Section 402 of the Civil Procedure Code. (please see objections filed by the substituted defendant-appellant at page 72-73 of the brief). Written submissions have also been filed by both the plaintiff-respondent and the defendant-appellant in regard to both their separate applications. Whilst the substituted defendant-appellant strenuously opposed the re-institution of the proceedings on the basis of Section 402, of the Code, Counsel for the plaintiff-respondent had sought to support his application for re-institution by attempting to come within Section 406 of the Civil Procedure Code. The learned District Judge by his order dated 20.10.2000 considered both contentions and rejected the individual applications made by both the plaintiff and the defendant. Whilst the plaintiff has not appealed against the order made against him the substituted defendant-appellant has preferred this appeal against that part of the order which dismissed his objections based on Section 402 of the Civil Procedure Code. Mr. Lasith Chaminda, Attorney-at-Law for the substituted defendant-appellant quite rightly concedes in the best traditions

of the bar that he would not be canvassing the reasons contained in the order of the learned District Judge for rejecting the objections of the substituted defendant-appellant, in view of the fact that Section 402 of the Civil Procedure Code would not be applicable in a situation where an order of laying by has been made. There is proposition for this contention articulated in Samsudeen vs. Eagle Star Insurance Corporation 64 NLR at page 372. In the circumstance, this Court finds no reason to interfere with the order made by the learned District Judge of Trincomalee dated 20.10.2000. Accordingly the appeal is dismissed but with no cost.

JUDGE OF THE COURT OF APPEAL.

NR/-