

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

CA Application No. Transfer 311/15
DC. Gampaha Case No. 1783/Land

Vidanalage Eric Roshan De Mel

Ranagala Pedige Renuka

Both of No. 486/A,
Nadunagamawa Road,
Weliveriya.

Defendant - Petitioners

VS.

1. Maduge Sujeewa Roshan Dias

2. Kotagedara Liyanage Shinali Surangika Perera

Both of No. 486/A,
Nadunagamawa Road, Weliveriya.

Presently at 486/8,
Nadunagamawa Road. Weliveriya.

Plaintiff - Respondents

C.A. No. 311/2015 (Transfer)

Before : Vijith K. Malalgoda, P.C., J (P/CA) &
P. Padman Surasena, J.
Counsel : Gamini Prematilake with Ranjith Henry
for the Petitioner.
Vicum de Abrew, D.S.G., for A.G.

Argued &

Decided on : 13.09.2016.

Vijith K. Malalgoda, P.C., J (P/CA)

Defendant-Petitioner in the present application has come before this Court seeking an order to transfer the District Court of Gampaha Case No. 1783/L under provisions of Section 46 of the Judicature Act. When this matter was supported for notices, the Court after going through the papers filed before this Court had issued notices on all the Respondents. As observed by this Court the Respondents came before this Court on notices on 28.09.2015 and continued to be represented before this Court until 04.11.2015. However since then the Respondent was not represented before Court even

after sending several notices on the Respondents.

However the respondents were well aware of this case for two reasons.

Firstly the Court had issued an interim order when the matter was supported before this Court on 01.09.2015 and the said stay order had been extended time to time.

Secondly the Respondents were represented by a Counsel before this Court on several dates and moved time to file objections but subsequently decided not to come before this Court. Therefore we are satisfied that the Respondents are well aware of the proceedings but decided not to come before this Court. Since no objections had been filed and the Respondents are absent and unrepresented the Court decided to take up this matter for inquiry today. During the inquiry learned Counsel appearing for the Petitioner brought to our notice an order which was produced before this Court marked "Z". The said order had been made by the Additional District Judge of Gampaha on 29.05.2015 and according to the petitioner an application had been made by the petitioner to present application to intervene in the said case No. 169/Mortgage had been dismissed by the Additional District Judge and in the said order she had referred to the deed which is the

subject matter of the present application before us. While referring to the said order made by the Additional District Judge the learned Counsel brings to our notice that the Additional District Judge had made references with regard to the deed which is the subject matter in the present application. The Respondents are absent and they have not filed any objections before us challenging the position taken up by the Petitioner before this Court. When considering all these matters and also considering the fact there are more than one Additional District Judge in the District Court of Gampaha, we decide to make order to transfer this case under Section 46 of the Judicature Act directing another Additional District Judge other than the Additional District Judge who heard the case No. 169/Mortgage to hear and determine the present case of No. 1783/L.

We direct the learned District Judge of Gampaha to nominate a different Judge other than the Additional District Judge who heard the case No. 169/Mortgage to hear and determine this case..

PRESIDENT OF THE COURT OF APPEAL

P.Padman Surasena, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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