

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

A.A.U. Amarasekera,
Gal Kotuwa,
Niwatuwa, Dorawaka.
(via Warakapola)

Plaintiff

C.A. No. 1064 / 2000 F

Vs.

D.C. Polonnaruwa No. 7455/M/98

Dolapihille Ilukketiye Kalagaha Gedara
Wasantha Malani Hamine,
"Srimali Florist",
Chaithya Road
Medirigiriya.

Defendant

AND NOW BETWEEN

A.A.U. Amarasekera,
Gal Kotuwa,
Niwatuwa, Dorawaka.
(via Warakapola)

Plaintiff Appellant

Vs

Dolapihille Ilukketiye Kalagaha Gedara
Wasantha Malani Hamine,
"Srimali Florist",
Chaithya Road
Medirigiriya.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSELS : Plaintiff Appellant- Absent and unrepresented
Defendant Respondent – Absent and unrepresented

DECIDED ON : 26.04.2012

UPALY ABEYRATHNE, J.

This appeal has been preferred from an order dismissing the Plaintiff Appellant's action. The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondent (hereinafter referred to as the Respondent) in the District Court of Polonnaruwa seeking to recover a sum of Rs. 27,500/=. The Appellant's case was that the Respondent, upon an agreement, agreed to pay a sum of Rs 60,000/- to the Appellant and accordingly the Respondent paid a sum of Rs. 32,000/- at the time of signing the said agreement and thereafter the Respondent has evaded the payment of the balance sum of Rs 27,000/-.

The Respondent took up inter alia the position that since the Appellant has failed to produce in court the documents he relied on the action of the Appellant should be dismissed under Section 50 of the Civil Procedure Code. Thereafter the learned District Judge has dismissed the Appellant's action.

It is apparent from the averment of the plaint that the said agreement was in the Appellant's possession or power. He has not stated that the document was not in his possession or power. Section 50 of the Civil Procedure Code stipulates that "if a plaintiff sues upon a document in his possession or power, he shall produce it in court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint." No doubt that the Appellant has failed to do so.

In the aforesaid circumstances I see no reason to interfere with the order of the learned District Judge dated 15.11.2000. Therefore I dismiss the appeal of the Appellant without costs.

Appeal dismissed.

Judge of the Court of Appeal