

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

Amarasinghelage Amara
Wickremasinghe,
No 178, Monarathenna,
Palugasdamana,
Polonnaruwa.

Plaintiff

C.A. No. 525 / 2000 F

Vs.

D.C. Polonnaruwa No. 6542/95/L

Anula Chitralatha Kumari,
No. 485, 500 Acre Housing Scheme,
New Town,
Polonnaruwa.

Defendant

AND

Amarasinghelage Amara
Wickremasinghe,
No 178, Monarathenna,
Palugasdamana,
Polonnaruwa.

Plaintiff Petitioner

Vs

Anula Chitralatha Kumari,
No. 485, 500 Acre Housing Scheme,
New Town,
Polonnaruwa.

Defendant Respondent

AND NOW BETWEEN

Amarasinghelage Amara
Wickremasinghe,
No 178, Monarathenna,
Palugasdamana,
Polonnaruwa.

Plaintiff Petitioner Appellant

Vs.

Anula Chitralatha Kumari,
No. 485, 500 Acre Housing Scheme,
New Town,
Polonnaruwa.

Defendant Respondent- Respondent

BEFORE : UPALY ABEYRATHNE, J.
COUNSELS : Bimal Rajapaksa with Ravindra Anavaratne for
the Plaintiff Appellant
W.D. Weeraratne for the Defendant Respondent
ARGUED ON : 16.05.2012
DECIDED ON : 18.01.2013

UPALY ABEYRATHNE, J.

The Plaintiff Petitioner Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondent-Respondent (hereinafter referred to as the Respondent) in the District Court of Polonnaruwa

praying for a judgment that the Appellant was entitled to the possession of the land described in the schedule to the plaint.

On the 2nd date of trial namely on 19.11.1997 the Appellant was absent in Court. The Counsel for the Appellant had informed Court that he has no instructions to appear and prosecute the case. Thereafter the learned trial Judge has dismissed the action of the Appellant. Thereafter the Appellant has made an application to vacate the said order of dismissal of the action. The Respondent has filed her statement of objection to the said application. After an inquiry the learned Additional District Judge has dismissed the said Application of the Appellant. Being aggrieved by the said order of dismissal dated 29.08.2000 the Appellant has appealed to this Court.

It appears from the proceedings of the case that at the aforesaid inquiry the Appellant has led evidence to prove that on the relevant date she could not come to Court due to sudden illness arisen with her pregnancy. In support of this fact the Appellant has produced a medical certificate marked P 1. Said medical Certificate has been proved by the evidence of the Doctor who had issued it. Said Doctor in his evidence has said that he had given treatments to the Appellant. The Respondent has not adduced any material to disbelieve the said evidence.

When I consider the said evidence it seems to me that the learned Additional District Judge without paying his attention to the provisions contained in Section 87(3) of the Civil Procedure Code has dismissed the Appellant's said Application. It must be noted that Section 87(3) of the Code has not laid down such a simple procedure when an action is dismissed under Section 87(1) of the Code. Subsection (3) of Section 87 read thus;

87(3) The plaintiff may apply within a reasonable time from the date of dismissal, by way of petition supported by affidavit, to have the dismissal set aside, and if on the hearing of such application, of which the defendant shall be given notice, the court is satisfied that there were reasonable grounds for the non-appearance of the plaintiff, the court shall make order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the action as from the stage at which the dismissal for default was made.

According to Subsection (3) if the court is satisfied that there are reasonable grounds for the non-appearance of the plaintiff, then the court shall make order setting aside the dismissal. Hence the duty of the trial judge is to consider whether the evidence before him reveals reasonable grounds for setting aside the dismissal.

In the said circumstances I am of the view that the learned Additional District Judge has erred in rejecting the evidence and the medical Certificate and dismissing the action for non-appearance of the Appellant. It appears that the learned trial judge has embarked on a voyage of discovery to find the shortcomings pertaining to the issuance of the medical certificate.

In the said circumstances I set aside the order of the learned Additional District Judge dated 29.08.2000 and allow the appeal of the Appellant with costs. I direct that this case be sent back to Polonnaruwa District Court to proceed with the trial expeditiously.

Appeal allowed.

Judge of the Court of Appeal