
**PREMASIRI AND OTHERS
VS
KUMARASINGHE**

COURT OF APPEAL.
SOMAWANSA, J. (P/CA) AND
WIMALACHANDRA, J.
CALA 28/2004.
DC BANDARAWELA 829/L.
JUNE 29, 2005.

Civil Procedure Code, section 121 — Name of witness in the list - Is a party entitled to object to a witness being called on the basis that the witness would give irrelevant and inadmissible evidence ?

HELD:

1. A witness can be called to give evidence if his name has been included in the list.
2. A party cannot object to such a witness being called, merely on the ground that the witness will give irrelevant and inadmissible evidence.
3. The court cannot even with the consent of parties depart from the provisions of law, as to how evidence shall be given by a witness.

Per Wimalachandra, J.

“A party can only object to a witness giving inadmissible and or irrelevant evidence ; it is for the Judge to decide whether evidence is inadmissible or irrelevant”

APPLICATION for leave to appeal from an order of the District Court of Bandarawela.

Hemasiri Withanachchi for defendant-petitioner.

Sunil F. A. Cooray for plaintiff - respondent.

Cur.,adv.vult.

August 24, 2005.

L. K. WIMALACHANDRA. J.

This is an application for leave to appeal from the order of the District Judge of Bandarawela dated 12.01.2004. By that order the learned District

Judge allowed the plaintiff's application to call Hitihamy Mudiyansele Premadasa, an engineer of the Road Development Authority as a witness.

The defendant-petitioners (the defendants) objected to the calling of this witness on the ground that his evidence would be irrelevant and inadmissible. The question that arises for determination is whether a party is entitled to object to a witness being called on the basis that the said witness would give irrelevant and inadmissible evidence. Admittedly the said witness was included in the list of witnesses in terms of section 121 of the Civil Procedure Code. A witness can be called to give evidence if his name has been included in such list. A party cannot object to such a witness being called, merely on the ground that the witness will give irrelevant and inadmissible evidence. The Court cannot, even with the consent of parties depart from the provisions of law, as to how evidence should be given by a witness. A party can only object to a witness giving inadmissible and/or irrelevant evidence. It is for the Judge to decide whether that evidence is inadmissible or irrelevant.

The relevant portion of the impugned order marked "Y2" reads as follows :

“මෙම සාක්ෂිකරු සහ ලේඛන 1995 වසරේ ලැයිස්තුගත කොට ඇති අතර එම සාක්ෂි මෙහෙයවීමෙන් පැමිණිලිකරුගේ දකුණු මායිම සම්බන්ධයෙන් නවදුරටත් පැහැදිලි සාක්ෂි ඉදිරිපත්වීමක් මඟ විත්තියට අගතියක් සිදුවිය නොහැකි බැවින් විත්තියේ විරෝධතාවය පිළිගැනීම ප්‍රතික්ෂේප කරමි.”

It follows that the order made by the learned Judge was correct in allowing the plaintiff to call that witness as his name had been included in the list of witnesses filed in Court in terms of section 121 of the Civil Procedure Code. However, at the time of making this application the examination and re-examination of that witness had been concluded. If the evidence given by the witness is inadmissible, that matter can be taken up in the main appeal.

For these reasons, we are of the view that this is not a fit case to grant leave to appeal. Accordingly, the application for leave to appeal is dismissed with costs fixed at Rs. 10,000.

SOMAWANSA, J.—I agree.

Application dismissed.