

**KULATUNGA**  
**v.**  
**SAMARASINGHE**

COURT OF APPEAL.

A. S. WIJETUNGE, J. AND H. W. SENANAYAKE, J.

C.A. No. 181/86—D. C. MATARA 7192. F.

NOVEMBER 29, 1989.

*Delay in delivery of judgment – Findings of fact on oral testimony.*

A judgment delivered two years and four months after the tender of written submissions cannot stand. The case depended on the oral testimonies of witnesses. The impression

created by the witnesses on the judge is bound to have faded away after such a long delay. The learned judge was bound to have lost the advantage of the impressions created by the witnesses whom he saw and heard and his recollections of the fine points in the case would have faded from his memory by the time he comes to write the judgment.

**Case referred to :**

*Mohota v. Sarana 67 CLW 3*

APPEAL from judgment of the District Court of Matara.

*H. Soza* for 11th defendant-appellant.

*D. R. P. Goonetillake* for plaintiff - respondent.

*Cur. adv. vult.*

January 31, 1990.

**H. W. SENANAYAKE, J.**

The plaintiff-respondent instituted the action for a partition of a land called Borelessehunnegehna described in the schedule to the plaint and depicted in plan 1318 filed of record marked 'X'.

The learned Counsel for the defendant-appellant submitted to court that the learned District Judge after the conclusion had taken a considerable time to deliver judgment in this case and he submitted that the decision of the case depended on the oral testimony and that such a long delay in pronouncing judgment is prejudicial to the parties.

In examining the case record I find that the evidence was concluded on 17.6.83 and the documents were filed on 27.7.83 and a date was given for judgment on 22.09.83 and after number of days of postponement the judgment was delivered only on 26.11.85. It appears to be that the judgment was delivered after a lapse of two years and 4 months.

There is force in the submission of counsel that the impression created by the witnesses on the judge is bound to have faded after such a long delay.

I am of the view that the appellate court cannot place the same reliance on findings of fact made after such a long delay. The learned judge was bound to have lost the advantage of the impressions created by the witnesses whom he saw and heard and his recollection of the fine points in the case would have faded from his memory by the time he comes to write the judgment.

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Basnayake, C. J. stated in *Mohato v. Sarana* (1). "The appellate court cannot place the same reliance on findings of fact made after such a long delay as they would on such findings in a judgment delivered promptly after the hearing. We deplore the fact that there should be such a long delay in delivering judgment."

I respectfully agree with the view expressed by the Lord Chief Justice Basnayake. It is my view that the importance of making a decision when the facts and the impressions on the mind of the Judge are fresh and clear cannot be strongly stressed. In this case the long delay alone called for the interference by the Appellate court.

In these circumstance we have no other alternative except to direct the case to be sent for retrial *de novo*. We allow the appeal without costs.

**A. S. WIJETUNGA, J.** — I agree.

*Appeal allowed.*

*Case sent back for re-trial.*

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