

1957 Present : Basnayake, C.J., and Sinnatamby, J.

I. H. BABUN NONA, Appellant, and N. B. ARIYASENA
et al., Respondents

S.C. 122 (Inty.)—D. C. Matara, 810/P

Summons on defendant—Personal service necessary—Civil Procedure Code, s. 59.

The provisions of section 59 of the Civil Procedure Code regarding service of summons on a defendant are imperative and can be satisfied only if the summons is delivered or tendered to the defendant personally.

APPPEAL from an order of the District Court, Matara.

R. A. Kannangara, with *A. S. Vanigasooriyar*, for Defendant-Appellant.

N. E. Weerasooria, Q.C., with *D. E. V. Dissanayake*, for Plaintiffs-Respondents.

February 28, 1957. BASNAYAKE, C.J.—

The defendant-appellant sought unsuccessfully to have the interlocutory decree in this case set aside on the ground that she had not been served with summons. The process server, who was called as a

witness, admits that he did not serve the summons on the defendant herself. He states that he delivered the summons to her husband, and that the defendant was in the house at the time. The defendant denied that she was in her husband's house on the date on which the Fiscal stated that he delivered the summons to her husband and pleaded that she had not been served with summons in the manner prescribed by the Civil Procedure Code. Section 59 of the Civil Procedure Code requires that service of summons shall be made "by delivering or tendering to the defendant personally a duplicate thereof". The requirement of the section is satisfied only if the summons is delivered or tendered to the defendant personally. The provisions of the section are imperative and should be strictly observed. Clearly in the instant case, the statutory requirement has not been complied with. The defendant is therefore entitled to the relief she seeks. We therefore set aside the order of the learned District Judge refusing to vacate the interlocutory decree and direct that the interlocutory decree be vacated and that the appellant be allowed to file answer and defend the action. The appellant is entitled to the costs of this appeal.

SINNETAMBY, J.—I agree.

Order set aside.