

1952

Present : Pulle J. and L. M. D. de Silva J.

K. VYRAMUTTU, Appellant, and R. MYLVAGANAM,
Respondent

S. C. 107—D.C. Trincomalee, 3,859

Civil Procedure Code—Non-appearance of plaintiff—Decree nisi—Application to set it aside—Time limit of 14 days—Computation—Section 84 (1).

The period of fourteen days referred to in section 84 (1) of the Civil Procedure Code must be reckoned as from the date of the formal decree in form No. 21 and not from the date of the order directing that the decree nisi be entered.

APPEAL from an order of the District Court, Trincomalee.

N. C. J. Rustomjee, for the plaintiff appellant.

No appearance for the respondent.

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Cur. adv. vult.

¹ (1952) A. C. 189.

² (1950) A. C. 345 at 356.

November 5, 1952. PULLE J.—

The appellant in this case is the plaintiff. He prayed for a declaration of title to an undivided three acres from and out of a land called "Puliyadi Vayal", ejectment and damages. On the date of trial, namely, the 18th March, 1952, the appellant was absent. His Proctor was present but he stated that he had no instructions and that he was not appearing for the appellant. The learned District Judge then made an order in the following terms:—

" Enter decree nisi dismissing plaintiff's action with costs. "

On the 24th March the appellant's Proctor filed a petition and an affidavit and moved for a notice on the defendant to shew cause why the " decree nisi entered should not be vacated ". In point of fact no decree nisi in form 21 as required by section 84 of the Civil Procedure Code has been entered at all. This fact has since been fully verified.

The case was called on the Bench on the 1st April and a notice was issued on the defendant returnable on the 5th April. On the latter date the parties and their respective Proctors appeared and the order now under appeal was made. It reads—

" Cause has not been shown within 14 days. Application refused. "

The short point that arises for determination is whether the learned Judge was right in refusing the application on the ground that 14 days had elapsed since the order which he made on the 18th March. It was laid down in the case of *Austin de Mel v. Kodagoda*¹ that the period of fourteen days referred to in section 84 must be reckoned as from the date of the formal decree in form 21 and not from the date of the order directing that the decree nisi be entered. The learned District Judge was, therefore, in error in refusing the appellant's application that the order of the 18th March be vacated solely on the ground that when the application was taken up for hearing on the 5th April a period of 14 days had elapsed. We, therefore, set aside the order of the 5th April and remit the case with the direction that the motion dated 24th March be heard and disposed of on its own merits. The appellant will be entitled to the costs of the appeal. The costs below will be in the discretion of the learned District Judge.

L. M. D. DE SILVA J.—I agree.

Order set aside.

¹ (1945) 46 N. L. R. 150.