

1968 Present : H. N. G. Fernando, C.J., and Pandita-Gunawardene, J.

K. KATHIRESU, Appellant, and V. SINNIAH and another,
Respondents

S. C. 436/66 (F)—D. C. Jaffna, 2006/L

Civil procedure—Non-appearance of Proctor and client on account of Proctor's mistake—Effect on decree nisi.

Where a Proctor and his client (the plaintiff) were absent on the trial date because the Proctor had by mistake taken]down the date of trial as 18th August, when in fact the trial was fixed for]10th August—

Held, that the decree *nisi* which]was]entered on account of the non-appearance should be set aside.

APPPEAL from an order of the District Court, Jaffna.

V. Arulambalam, for the Plaintiff-Appellant.

S. Sharananda, for the Defendants-Respondents.

December 15, 1968. H. N. G. FERNANDO, C.J.—

The affidavit and the evidence are to the effect that the Proctor and the plaintiff himself were absent on the trial date because the Proctor had by mistake taken down the date of trial as 18th August, when in fact the trial was fixed for 10th of August. It is clear from the order of the District Judge that he has accepted this evidence as correct. He nevertheless refused to set aside the decree *nisi* because he relied on certain decisions in which the failure of a party to appear was due to his own negligence. Counsel for the plaintiff has now referred us to a case reported in 16 Times of Ceylon Reports, page 119, in which the only reason for non-appearance was a mistake made by the parties' Proctor. The present case is on all fours with that.

We allow the appeal and send the case back to the District Court. The District Judge will then fix a date, on or before which, the plaintiff will deposit a sum of Rs. 150 as costs of the past proceedings. If this amount is duly paid the District Judge will set aside the decree appealed from and set the case down for trial. If the costs are not paid before the fixed date, the decree under appeal will stand affirmed.

PANDITA-GUNAWARDENE, J.—I agree.

Appeal allowed.

