

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA

Perumbuli Achchige Senaka,
No. 484, Galawila Road,
Homagama.

Plaintiff

CALA 02 / 2012
DC Homagama No. 6859 / P

Vs.

1. Santhi Nihal Seneviratne,
No 138 / 1, Havelock Road,
Colombo.

And 63 Others

Defendants

AND

Perumbuli Achchige Sumanawathie,
No. 525, Rohala Devata Road,
Homagama.

12th Defendant Appellant

Vs

Perumbuli Achchige Senaka,
No. 484, Galawila Road,
Homagama.

Plaintiff Respondent

Santhi Nihal Seneviratne,
No 138 / 1, Havelock Road,
Colombo.
And 63 Others

Defendant Respondents

AND NOW BETWEEN

Perumbuli Achchige Sumanawathie,
No. 525, Rohala Devata Road,
Homagama.

12th Defendant-Petitioner-Petitioner

Vs.

Kambawilage Kamal Shantha,
533/2, Silvervorin Watta,
Hospital Road, Homagama.

33A. Defendant-Respondent-Respondent

BEFORE

: UPALY ABEYRATHNE, J.

COUNSEL

: L.A.P. Chitrangani with Nilushani for the 12th
Defendant-Petitioner-Petitioner

Chatura Galhena for the 33A Defendant-
Respondent-Respondent

ARGUED ON

: 21.06.2012

DECIDED ON

: 05.12.2012

UPALY ABEYRATHNE, J.

The 12th Defendant-Petitioner-Petitioner (hereinafter referred to as the Petitioner) in this Application has sought leave to Appeal from an order of the learned District Judge dated 24.02.2012.

The Petitioner has stated that the Plaintiff Respondent instituted an action in the District Court of Homagama seeking to be partitioned a land described in the schedule to the plaint. Thereafter a preliminary survey had been done and plans bearing No 9787 and 9787A had been tendered to Court.

In paragraph 3 of the petition the Petitioner has stated that pending the said action bearing No. 6859/P 33A Defendant-Respondent-Respondent (hereinafter referred to as the 33A Defendant) started cutting down trees separating portions of the subject matter and also was about to dispose of certain portion of the land. Then the plaintiff as well as the 5th 29th 30th and 60th Defendant Respondents made two separate applications dated 05.10.2010 and 04.10.2010 respectively restraining the 33A Defendant inter alia disposing of any portion of the corpus. Both the said applications for interim injunction had been refused by order dated 30.11.2010.

The Petitioner has not disclosed whether there had been an appeal from the said order dated 30.11.2010.

The Petitioner has further stated that prior to the institution of the said action No. 6859/P the 1st and 2nd Defendant Respondent had instituted an action bearing No. 3710 / L against the 33A Defendant in the District Court of Homagama seeking a declaration of title to Lot No 1 depicted in the said Preliminary Plan on prescription. Although the learned District Judge had delivered a judgment in favour of the 1st and 2nd Defendant Respondent

the Provincial Appellate High Court had set aside the said judgment of the trial judge and had delivered a judgment in favour of the 33A Defendant. The judgment of the Provincial Appellate High Court had been upheld by the Supreme Court and thereby the 33A Defendant had secured his prescriptive title to Lot 1 depicted in said preliminary plan.

The Petitioner is now seeking to restrain the 33A Defendant from possessing the said Lot 1 in the Preliminary Plan. It seems to me that the Petitioner is now taking steps to jeopardise the judgment of the Supreme Court. Such an action of the Petitioner should not be encouraged.

In the said circumstances I refuse to grant leave and dismiss the application for leave to appeal with costs.

Application dismissed.

Judge of the Court of Appeal