

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC**  
**OF SRI LANKA**

**SC Appeal No. 88/2003**

C.A. Revision No. 2071/2001

D.C. Kuliyapitiya No. 11128/L

In the matter of an Application for Special  
Leave to Appeal under Article 128 (2) of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka.

Wijekoon Herath Mudiyansele  
Jayasinghe,  
No. 233, Kuliyapitiya Road,  
Narammala.

**Plaintiff-Respondent-Respondent-**  
**Petitioner-Appellant**

**Vs**

1. Wimalendra Jayamaha,  
Helvisiawatta,  
Narammala.

**Defendant-Respondent-Respondent-**  
**Respondent-Respondent**

2. Jayamaha Mudiyansele Podibandara  
Deeson Jayamaha,  
of "Rocket 36",  
Kuliyapitiya Road,  
Narammala.

**Petitioner-Petitioner-Respondent-**  
**Respondent**

**BEFORE** : **TILAKAWARDANE, J**  
**RATNAYAKE, PC, J &**  
**DEP, PC, J**

**COUNSEL** : C.E.de Silva for Plaintiff-Respondent-Respondent-  
Petitioner-Appellant.  
D.L.L. Nissanka for Petitioner-Petitioner-Respondent-  
Respondent.

**ARGUED &**

**DECIDED ON** : **06/08/2012**

**TILAKAWARDANE, J.**

Leave was granted on 28/11/2003 on the questions of law set out in paragraph 22 B & G of the Petition dated 30/09/2003. At the time of the commencement of arguments, both Counsel agree that they would be restricted in the arguments only to the following questions of law;

“Did the Court of Appeal err in interpreting that the premises bearing assessment No. 181 is excluded from the lease agreement bearing No. 871 marked (Θ2) ?”

According to the schedule in the lease agreement the premises was marked as No. 871 more fully described and depicted as lot No. 03 and the bear land abutting the said premises described as lot 5 in plan No. 1245 dated 01/05/1989 prepared by H.M.H. Wijekoon, Licensed Surveyor and marked as (Θ3).

Therefore there is no doubt, as conceded by parties, that the lease agreement bearing No. 871 dated 01/01/1988 and attested by M.H. Dharmaratne, Notary Public included and applied to both the said premises No. 181 and the land abutting the premises depicted in lot 05 of the aforesaid plan.

In terms of the said lease agreement, which commenced on 01/01/1988 and terminated on 31/12/1993, the 1<sup>st</sup> Respondent at the end of the agreement had to handover peaceful and vacant possession of the premises to the Appellant. He failed and neglected to do so despite the oral request and finally the request made in writing dated 28/09/1993.

The Plaintiff-Respondent-Respondent-Petitioner-Appellant (hereinafter referred to as the Appellant) instituted action bearing No. 10812/L in the District Court of Kuliapitiya against the Defendant-Respondent-Respondent-Respondent for ejectment of the Respondent and all those holding under the Respondent from premises bearing assessment No. 181, Kuliapitiya Road, Narammala and the bare land, in extent 18' x 20', abutting the premises and situated behind the said premises. This was the relief sought by the Appellant in the Original Court. The settlement was on this basis.

The case instituted in the District Court of Kuliapitiya was settled subsequently by an agreement entered into on 16/11/1994. No evidence was led in the case. Subsequently the consent Judgment was entered and decree was accordingly issued by the learned District Judge of Kuliapitiya. In execution of the said writ, the fiscal of the said Court handed over vacant possession of the said premises and land to the Appellant on 12/01/1995.

Subsequently, after the report of the fiscal had been filed in Court dated 13/01/1995 (marked as X5). The Petitioner-Petitioner-Respondent-Respondent (hereinafter referred to as the 2<sup>nd</sup> Respondent) made an Application

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(X6) under Section 328 of the Civil Procedure Code in the District Court of Kuliyaipitiya for the restoration of possession to him of the disputed premises in respect of only the premises bearing assessment No. 181, Kuliyaipitiya Road, Narammala. It is to be noted that the 2<sup>nd</sup> Respondent was the father of the original Defendant in the case.

After inquiry the learned District Judge of Kuliyaipitiya gave order dated 11/12/2001 (marked X14), dismissing the action but the the 2<sup>nd</sup> Respondent preferred a Revision Application and obtained Judgment of the Court of Appeal in his favour. Against this Judgment an Appeal has preferred by the Appellant, who filed an Application for Special Leave to Appeal to this Court against that Judgment dated 26/08/2003.

Parties inform Court that after vacant possession was granted to the Appellant in this case that the premises had been demolished and that in any event there would be no possibility of restoration of the 2<sup>nd</sup> Respondent to the premises.

This Court having considered the evidence that had been led in the District Court and the documents tendered to this Court and the submissions of Counsel cannot agree with the contention of the 2<sup>nd</sup> Respondent was that whilst he made no claim for the bare land they asserted that this land referred to in the schedule was not part of the lease agreement adverted to as (D2) .

In considering the said lease agreement, if there can be no ambiguity, it is clearly intended to include both the premises and the land referred to in the agreement (D3) as set out in its schedule.

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“ ..... යන මෙහි තුල වූ ඉඩමෙන් දකුණු මායිමට යාච නොබෙදු දෙකෙන් එක් පංගුව තුල පිහිටි වර්පනම් අංක 181 දරණ ගොඩනැගිල්ල සහ එය පිටුපසින් ඉඩමේ මැදින් ඇති කාණුවේ සිට අඩියක්ද අතහැර ඉතිරි බිමෙන් අඩි 18ක් පලල සහ අඩි 20ක් දිග තොබෙදු බිම් ප්‍රමාණයක් සහිත එහි පිහිටි සියලු දේ වේ .....”

Therefore clearly there were two inclusions described in the schedule of the lease agreement No. 871 marked as (ව3). This succinctly state that the agreement adverted to both the premises bearing No.181 and the land that lay to the rear of the said premises. There can be no dispute on this matter. Therefore this Court having considered the facts of this case set aside the Judgment of the Court of Appeal dated 26/08/2003 holding in favour of the Appellant and decide the question of law in his favour..

Appeal is allowed. Said Judgment is set aside and we affirm the order of the learned District Court Judge of Kuliyapitiya dated 11/12/2001. No costs.

**JUDGE OF THE SUPREME COURT**

**RATNAYAKE, PC, J.**

I agree

**JUDGE OF THE SUPREME COURT**

**DEP, PC, J.**

I agree

**JUDGE OF THE SUPREME COURT**

**PR/-**