

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

Bernard Fernando of  
No. 10/1, Pallepola,  
Matale District,  
Central Division,

**PLAINTIFF**

C.A. 690/1998 (F)(**Plaintiff-Respondent in 691-1998**)  
691/1998 (F)

D.C Matale 4672/L

Vs.

1. P.P.G. Sunil Shantha of  
Shantha Stores,  
Pallepola,  
Matale District.
2. M. G. Piyasena of  
Uduwela, Pallepola,  
Matale District.
3. M. G. Karunaratne of  
Pallepola,  
Matale District.

**DEFENDANTS**

Bernath Fernando of  
No. 10/1, Pallepola,  
Matale District,  
Central Division,

**PLAINTIFF-RESPONDENT**

Vs.

1. P.P.G. Sunil Shantha of  
Shantha Stores,  
Pallepola,  
Matale District.
2. M. G. Piyasena of  
Uduwela, Pallepola,  
Matale District.
3. M. G. Karunaratne of  
Pallepola,  
Matale District.

**DEFENDANT-RESPONDENTS**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** Parties were absent and unrepresented

**DECIDED ON:** 24.05.2012

**GOONERATNE J.**

It is very unfortunate that parties were unrepresented on the date of hearing of this appeal. The Journal Entries maintained in this appeal and as reflected in the docket, would indicate the willful or careless/negligent absence from court of both parties. The registered Attorney for Appellant having filed Notice of Appeal and Petition of Appeal

had not taken the trouble to ascertain the position of the appeal from the Registry of this court, in spite of the fact that brief fees were paid and brief prepared by the Registry. As such this court proceeded to have the appeal fixed for judgment.

There are two Petitions of Appeal filed by the Plaintiff-Respondent and the 1<sup>st</sup> – 3<sup>rd</sup> Defendant-Respondents. The Plaintiff-Respondent's position seems to be, as gathered from the Petition of Appeal, is that the land described in the schedule to the plaint is owned by Plaintiff-Respondent and the road way available to get into the land had been obstructed and Plaintiff be permitted for the use and occupation of the road way. Defendant-Respondent had objected to granting any road way, since the Plaintiff was using the public road which give access to his premises, and as such no other road way should be made available to Plaintiff-Appellant. The prayer to the Petition of Appeal prays for access as shown in plan P2 (No. 2618) and depicted 'x'. Parties proceeded to trial on 14 issues and all issues (1-8) raised by Plaintiff had been answered in Plaintiff's favour. Perusal of the judgment, the learned District Judge has entered judgment in favour of the Plaintiff but seems to have restricted Plaintiff's use to the portion shown as 'x' in plan P2 (2618). Only 3 feet access had been permitted. Therefore it is apparent that Plaintiff-Appellants had

succeeded in the Original Court subject to the above limitation. The learned District Judge has considered all primary and relevant facts and entered judgment for Plaintiff-Appellant. Therefore this court would not unnecessarily disturb such findings. Perusal of the proceedings, it is apparent that several persons had given evidence on behalf of Plaintiff. The Grama Sevaka had given evidence and stated that the access road has been used for a period of at least 22 years. Trial Judge has considered the long use of the access road (30 years) and had held in favour of Plaintiff-Appellant. Since the breath of the road has not been given by way of evidence the trial Judge seems to have restricted the use only to 3 feet.

The Petition of Appeal filed by the Defendant-Appellants, complain, about the absence of length and breadth in 'x' of plan P1. In support of the contention, has produced plan 25/18 of 31.5.1993. It is also their position that the Plaintiff has alternate access to the main road and that Plaintiff's house is near the main road and as such Plaintiff would not be entitled to access as claimed by Plaintiff.

The following extract from the judgment of the learned District Judge would indicate that there had been a dispute between the parties and trial Judge's version or reasoning could be gathered without much difficulty.

ආරවුලට අදාල මාර්ගය පිහිටා ඇතැයි කියන ඉඩම චිත්තිකරුට අයිති බව පලමුවන චිත්තිකරු සාක්ෂි දෙමින් ප්‍රකාශ කර ඇත. නමුත් මෙම ඉඩම මගින් මාර්ගයක් නොතිබූ බවත්, තමාගේ ගොඩනැගිල්ල වශාල කොට ඉදිකිරීමට සුදානම් අවස්ථාවේ අල්ලපු ගොඩනැගිලි දෙකකට එනා පැත්තේ සිටින අය ඊට වරුද්ධ වූ බවත්, ප්‍රකාශ කල අතර, මෙම ඉඩම් කැබලි පෙන්වන සැලැස්මත් මෙම චිත්තිකරු විසින්ද, මානක කේ. ඕ. පෙරේරා මහතා ලවා සකස්කරවා ගෙන ඇත. එම අංක : 168 සහ 92.11.15 දින කරණ සැලැස්ම (වි : 1) ලෙස සලකුණු කර ඉදිරිපත් කර ඇත. එහි පැ : 1 සැලැස්මේ සඳහන් මාර්ග පෙන්වා නොමැති අතර, පැමිණිලිකාරියගේ නිවසද, සම්පූර්ණයෙන් පෙන්වා නොමැත. එම සැලැස්ම ආරවුලට අදාල ඉඩම් නිවැරදි ලෙස පෙන්වන සැලැස්මක් ලෙස තීරණය කළ නොහැකිය. පැමිණිලිකාරිය මෙම මාර්ගය ඉල්ලා සිටින්නේ දීර්ග කාලයක් පාවිච්චි කිරීමෙන් ලද අයිතිය මතය. ඒ සම්බන්ධයෙන් පැමිණිල්ලෙන් සහ චිත්තියෙන් ඉදිරිපත් වූ ඉහත සඳහන් සාක්ෂි අනුව පැමිණිලිකාරිය සහ ඇයගේ පුරවගාමන් මෙම මාර්ගය වසර 30 කට අධික කාලයක් අවතීරයකින් තොරව පාවිච්චි කර ඇති බව තීරණය කිරීමට අවශ්‍ය ප්‍රමාණයටත් වඩා සාක්ෂි ඉදිරිපත් වී ඇති බව පැහැදිලිය. 1 වන චිත්තිකරුට ඔහුගේ ගොඩනැගිල්ල වගිල කිරීම සඳහා අවශ්‍ය වූ අවස්ථාවේ මෙම මාර්ගයද ඒ සඳහා ප්‍රයෝජනයට ගැනීමට තැත්කිරීම නිසා මෙම ආරවුල හටගෙන ඇති බව පැහැදිලිය.

In all the above circumstances I affirm the judgment of the learned District Judge and dismiss both appeals with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL