

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

1. Ratnawalie Swarnatilaka Perera  
Samarasinghe,
2. Shirani Perera Samarasinghe,  
Both of 64/C Garagewatta,  
Thorana Junction,  
Kelaniya.

Plaintiffs

C.A. No. 535 / 2000 F

**Vs.**

D.C. Colombo No. 15213 / L

Anoja Kumari Perera Samarasinghe,  
64, Garagewatta,  
Thorana Junction, Kelaniya.

Defendant

**AND NOW BETWEEN**

1. Ratnawalie Swarnatilaka Perera  
Samarasinghe,
2. Shirani Perera Samarasinghe,  
Both of 64/C Garagewatta,  
Thorana Junction,  
Kelaniya.

Plaintiff Appellants

**Vs**

Anoja Kumari Perera Samarasinghe,  
64, Garagewatta,  
Thorana Junction, Kelaniya.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSELS : Ali Sabri with D. Nandasinghe for the Plaintiff  
Appellant  
Sirimal D vithanage with Prasad Dissanayake for  
the Defendant Respondent

WRITTEN SUBMISSIONS ON: 30.11.2011

DECIDED ON : 17.05.2012

UPALY ABEYRATHNE, J.

The Plaintiff Appellants (hereinafter referred to as the Appellants) instituted the said action against the Defendant Respondent (hereinafter referred to as the Respondent) in the District Court of Colombo seeking inter alia for a declaration that the Appellants are entitled to a right of way in the nature of a servitude in width 10 feet over the road way depicted as lot 2E in plan bearing No 1282 dated 26.06.1955 made by Malalagama Licensed Surveyor.

The Respondent in her answer took up the position that according to the Deed of Partition bearing No 128 dated 29.12.1986 attested by Padmasiri Perera Notary Public to which the Appellants too had placed their signature, the road way claimed by the Appellants was a 8 feet wide road in extent of 8.75 perches. The case proceeded to trial on 11 issues. After trial, the learned Additional District Judge delivered judgment in favour of the Respondent. Being aggrieved by

the said judgment dated 06.07.2000 the Appellants have preferred the present appeal to this court.

Since both parties have admitted the disputed road way the sole question to be determined in this case was the width of the said road way. The Appellants relied on a plan bearing No1282 dated 26.06.1955 made by Malalagama Licensed Surveyor. The said road way has been depicted as lot 2E in extent of 8.75 perches in said plan No 1282. It appears that the Appellants contention was that the said extent of 8.75 perches was the soil area of the said 10 feet road way. On other hand the said Deed of Partition bearing No 128 to which the Appellants too had placed their signature, depicts the said road way in 8 feet wide in extent of 8.75 perches. Therefore it seems that in both plans the extent of the alleged road way is same as the claim of the Appellant except the width of it.

Now the next question to be determined is the width of the said road way. Since there has been no dispute over the extent of the said road way can there is deference in the width of the said road. At the trial the Appellants' have produced plan No 3869 dated 10.10.1992 made by S. Rasappa, Licensed Surveyor as P 9 and plan No. C/225 dated 30.09.1996 made by Saliya Wickremasinghe, Licensed Surveyor as P 13 to prove the road way and obstructions on it. P 9 does not describe the extent of the road way. But in P 13 the said road way has been depicted in extent of 9.89 perches.

The Appellants have raised issue No 2 on the basis that they have acquired prescriptive title to the road way depicted in plan No. 1282 as lot 2E in extent of 8.75 perches. It is clear from the said evidence that the Appellants have adduced evidence to prove a larger road than the road depicted in plan No 1282.

Therefore I am of the view that the learned Additional District Judge has come to a right conclusion after the evaluation of the evidence of the Appellants' case.

The learned Counsel for the Appellants further submitted that the Judgment has been delivered after a long lapse of time. I have carefully considered the said submission. Although the judgment has been delivered after a long delay it has not caused any prejudice to the substantial rights of the Appellants. Hence I reject the said submission of the learned Counsel.

In the said circumstances I see no reason to interfere with the judgement of the learned Additional District Judge dated 06.07.2000. Therefore I dismiss the appeal of the Appellants with costs.

*Appeal dismissed.*

Judge of the Court of Appeal