

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

1. Lalitha Jayasuriya
2. Amitha Jayasuriya
3. Vijitha Jayasuriya all of
Narigama, Hikkaduwa.

4. Thilakasena Jayasuriya of
Delkanda, Nugegoda.

PLAINTIFFS

C.A 1217/1998(F)
D.C. Galle 12304/L

Vs.

1. Hewage Baron Chandrasiri of
Thiranagama, Hikkaduwa.
(DECEASED)
- 1(a) Labunu Hewage Ananda Jayanatha
of Narigama, Hikkaduwa.

DEFENDANTS

AND

1. Lalitha Jayasuriya
2. Amitha Jayasuriya
3. Vijitha Jayasuriya all of
Narigama, Hikkaduwa.

4. Thilakasena Jayasuriya of
Delkanda, Nugegoda.

PLAINTIFFS-APPELLANTS

Vs.

Labunu Hewage Ananda Jayanatha
of Narigama, Hikkaduwa.

DEFENDANTS-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: S.J. Mohideen with Dhanapala
for the Plaintiff-Appellants

S. Jayathilaka for the Defendant-Respondent

ARGUED ON: 30.03.2012

DECIDED ON: 10.08.2012

GOONERATNE J.

This was a land case filed in the District Court of Galle seeking a declaration of title to the land described in paragraph 2 of the plaint and for definition and or determination of the boundaries to the land in question. Parties proceeded to trial on 11 issues. Perusal of the proceedings I find that some evidence had been led in the original court. Then on 24.6.1998, an application had been made of consent of both parties for a site inspection by the trial Judge and parties agreed to abide by the decision of the Judge based

on the site inspection. Perusal of the said days proceedings indicate the usual procedure that was adopted by court i.e signing the case record by the parties. However it is also recorded therein that one of the Plaintiffs had not been present but the Attorney-at-Law for that Plaintiff had given an undertaking to abide by the order of the trial Judge based on the site inspection. Defendant was present and signed the record.

The inspection was held on 31.7.1998 at 3.45 p.m. Perusal of the notes maintained by court it is apparent that the trial Judge has recorded all relevant details at the site and counsel on either side had been present. The order by court was made on 19.8.1998. This appeal is from the said order. Both learned counsel briefly addressed this court on the date of hearing and also supported each others case by written submissions. It was the contention of learned counsel for Defendant-Respondent that there is no right of appeal and that the law is settled on the question that when parties enter into a compromise and leave it to the trial Judge to inspect the land in dispute parties surrender their right to appeal.

The learned counsel for Appellant in his submissions in this court sought to demonstrate some of the points referred to in paragraph 10 of the written submissions of Plaintiff-Appellant. I have considered all these matters and I regret to state that having perused the entirety of the site

inspection notes and the order made by the trial Judge, as such none of those points could be urged on one hand, and also misleading on the other hand, since the trial Judge had followed the usual procedure adopted by courts for a very long length of time, prevalent in our courts. I am not convinced of any one of those arguments put forward by learned counsel for Appellant. My views are fortified by the several case laws cited by the learned counsel for Defendant-Respondent. I have noted the following decided cases which are relevant to the case in hand and need to be applied without any reservation.

Civil Procedure Code in Ceylon – K.D.P. Wickremesinghe Chapter 27 pgs. 453/454...

Any order made judicially is appealable. Where, however, parties have agreed to accept or abide by the decision of a court, there is an implied waiver of this right of appeal. There is nothing to prevent parties from so agreeing to waive their right of appeal given to them by law.

In *Peries vs. Peris*, it was held that the parties had no right of appeal as they had constituted the Judge an arbitrator and had therefore waived their right of appeal.

In *Babunhamy vs. Andris Appu*, where the plaintiff and the defendant agreed to abide by the decision of the court after inspection of the subject-matter, it was held that the defendant had no right of appeal against the judgment. This decision was followed in *Guneratne vs. Andradi et al.*

In *Ameru vs. Appu Sinno*, where both sides practically agreed to leave the decision of the question in issue to the sole arbitration of the District Judge, no appeal was held to lie against the decision of the Judge.

These decisions were followed in De Hoedt vs. Jinasena, and in Mudiyanse vs. Loku Banda et al. In Punchibanda vs. Noordeen, it was held that where the parties agreed to abide by the decision of the Commissioner of Requests after an inspection of the premises in dispute no appeal lay from the decision. The decision in Davith Appuhamy vs. Peduru Naide, which was an appeal from a District Court was to the same effect.

In S. Marikkar vs. Abdul Azeer, it was held that no appeal lies where parties have agreed to be bound by the order of the Judge sought to be appealed from.

In all the above circumstance I affirm the order of the learned District Judge, Galle, and reject and dismiss this appeal with costs.

Appeal dismissed.

JUDGE OF THE ~~COURT~~ OF APPEAL