

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

C.A. 1207/99F  
D.C. N'Eliya 233/L

Mary Arochchiyam Leela Motha and  
two others  
11, 4<sup>th</sup> Lane, Koswatta Road, Nawala  
Plaintiff-Appellants

Vs

Jeff Sucroft, Jeff Engineers,  
Queen Elizabeth Road, N'Eliya.  
Kolonna  
Defenadant-Respondent

BEFORE : A W A SALAM, J

COUNSEL : Gamini Marapana PC with Naveen Marapana  
for the defendant-respondent.

plaintiff-appellants absent and unrepresented

ARGUED ON : 27.09.2012.

DECIDED ON : 28.09.2012.

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**A W ABDUS SALAM, J**

**T**he appellants who featured in the district court proceedings as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs have preferred the present appeal against the judgement dated 13 October 1999 dismissing the rei vindicatio action filed by them in respect of the subject matter of the action.

When the trial had commenced, the appellants (as they

are bound in law in an action of this nature) undertook to establish their title to the subject matter of the action and put the same in issue. Issue No 1 suggested by the plaintiffs relates to the devolution of title of the subject matter as averred in paragraphs 1 to 10 of the plaint. The position of the plaintiffs was that Simbrosia Amal Morias who exclusively owned the subject matter of the action at one point of time died on 17 July 1938, leaving a last will dated 2 June 1919. Even though the plaintiffs claimed that the last will of Simbrosia Amal Morias was admitted to probate in testamentary proceedings No 8691, no documentary proof was adduced in support of this position.

Even as regards the prescriptive title asserted by the plaintiffs no satisfactory evidence had been led at the trial to that effect. It has been emphasised on numerous occasions by our courts that in a *rei vindicatio* action it is highly dangerous to adjudicate in favour of the plaintiff without first going into and examining the title. In my opinion therefore the learned district judge has rightly concluded that the plaintiffs have failed to discharge the burden of establishing the title and dismissed the plaintiff action. Having analysed the evidence led at the trial I am of the opinion that the district judge cannot be faulted for concluding that the matters referred to in issues 1, 2 and 3 have not been proved by the plaintiff. For the foregoing reasons, I am of the opinion that the appellants cannot succeed on the issue of prescription or acquisition of

paper title and therefore this appeal merits no favourable consideration. As such, I am compelled to affirm the judgement of the learned district judge and accordingly dismiss the appeal subject to costs.

Judge of the Court of Appeal

NR/-