

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

K. A. Mano Pushpa Kumara
(Minor)
N. G. Kalyanawathie
(Next friend)
Old Road, Barawa Kumbura.

PLAINTIFF

C.A. 793/1998 (F)
D.C. Embilipitiya 5097/L

Vs.

1. Liyanage Karunadasa
Gorakawadiya, Yala 5
Katukapu Ara, Bomamdiya
Bandiganthota, Mahapelessa,
Surawewa.
2. Senerath Arachchige Dayananda
Weeraketiya Wadiya, Wiharagala,
Suriyawewa.

DEFENDANTS

AND BETWEEN

1. Liyanage Karunadasa
Gorakawadiya, Yala 5
Katukapu Ara, Bomamdiya
Bandiganthota, Mahapelessa,
Surawewa.

1ST DEFENDANT-APPELLANT

Vs.

K. A. Mano Pushpa Kumara
(Minor)
N. G. Kalyanawathie
(Next friend)
Old Road, Barawa Kumbura.

PLAINTIFF-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: M. I. Hadi for the 1st Defendant-Appellant
Saman Galappaththi for Plaintiff-Respondent

ARGUED ON: 12.07.2012

DECIDED ON: 10.10.2012

GOONERATNE J.

Action was instituted in the District Court of Embilipitiya by the Plaintiff (minor) for a declaration of title to the land described in the schedule to the plaint depicted in Survey General's plan No. 106/04 as lot A 2668, and for eviction/damages against the Defendant. The position of the Defendant-Appellants seems to be that they were joint cultivators and in possession by cultivating the subject matter since 1985 and that the Plaintiff-Respondent has been issued a permit in violation of the provisions of the

Land Development Ordinance. Parties admitted the corpus and that same belongs to the state within the purview of the Mahaweli Development Authority. Parties proceeded to trial on 12 issues. The important point to be decided is whether the permit is a valid permit issued by the said Authority.

Plaintiff's action was prosecuted by a 'next friend' since Plaintiff was a minor and evidence was given by the next friend on his behalf. An official witness and a cultivator gave evidence on behalf of the Plaintiff. Documents P1 – p6 were produced in evidence. Though documents P1 – P6 were produced subject to proof, at the close of the case of Plaintiff, Defendant did not object to the documents being read in evidence. As such it becomes evidence for all purposes of the case. Vide 1981 (1) SLR 18 at 24; 31 NLR 385; 1997 (2) SLR 101.

The land officer who gave evidence for the Plaintiff in his evidence stated that a permit was given to Plaintiff's father by the authority (Simon). Father died on 16.3.1993. Thereafter permit (P4) issued to Plaintiff, subject to the life interest of Plaintiff's mother (next friend). Witness confirmed that the present permit holder is the Plaintiff. He also in evidence testified that the 1st & 2nd Defendants have no right to the property in dispute, as per records of the authority. In cross examination the witness had maintained his position and testified that the issue of permit to Plaintiff was

regular and done correctly after a proper inquiry. Plaintiff's mother also gave evidence and stated that the original permit holder was her husband. This witness denied all accusation of forgery of the permit and testified that the Defendants are in unlawful occupation.

On the side of the Defendants the 1st Defendant and a Grama Sevaka gave evidence and expressed the position that Defendants are in occupation of the subject matter.

The learned District Judge has very carefully analysed the evidence and held that the Plaintiff is entitled to the relief claimed, and answered all most all Plaintiff's issues in the affirmative.

In Palisena Vs. Perera 56 NLR 407...

It is very clear from the language of the Ordinance and of the particular permit P1 issued to the plaintiff that a permit-holder who has complied with the conditions of his permit enjoys, during the period for which the permit is valid, a sufficient title which he can vindicate against a trespasser in civil proceedings. The fact that the alleged trespasser has prevented him from even entering upon the land does not afford a defence to the action; it serves only to increase the necessity for early judicial intervention.

Plaintiff has established title in terms of the permit issued under the Land Development Ordinance. Once the permit is proved and established in evidence it is for the Defendant-Appellants to satisfy court that they are in occupation of the land in dispute by lawful occupation. In this instance the Defendants could not prove any kind of lawful occupation to the land in

dispute. There is absolutely no merit in this appeal. This court has no hesitation in affirming the judgment of the learned District Judge. I affirm the judgment and dismiss this appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL