

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

Arachchige Don Dharmapala  
Seneviratne of Muhandiram,  
Dharmalingam Road,  
Vavuniya.

**Plaintiff**

Vs.

Sinnaiah Ramakrishnan  
No. 36, of Muhandiram,  
Dharmalingam Road,  
Vavuniya.

**Defendant**

**Case No.CA 315/99 (F)**

**DC Vavuniya 236/L**

Sinnaiah Ramakrishnan  
No. 36, of Muhandiram,  
Dharmalingam Road,  
Vavuniya.

**Defendant-Appellant**

CC0143

Vs.

Arachchige Don Dharmapala  
Seneviratne of Muhandiram,  
Dharmalingam Road,  
Vavuniya.

**Plaintiff-Respondent**

**BEFORE** : A.W.A. Salam J.

**COUNSEL** : Y.L. Edward Goonethilake with W.A.U. Alwis for  
the Defendant- Appellant and Rohan Sahabandu for Plaintiff-  
Respondent.

**Argued on** : 30. 11.2011

**Written Submissions tendered on** : 05.05.2011 and 16.02.2012.

**Decided on**: 06.06.2012.

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**A.W.A. Salam J.**

The defendant-appellant (defendant) has sought the present appeal against the judgment dated 25 March 1999 of the learned district judge of Vavunia, declaring the plaintiff-respondent (plaintiff) as being entitled to the possession of the subject matter of the action and ejection. The plaintiff stated that he was issued with a LDO permit bearing No DS/V/LE/02 by the Divisional Secretary, Vavuniya dated 15 November 1994, in respect of the land described in schedule 1 of the plaint. When he was so issued with the said permit the defendant was in

occupation of a portion of the subject matter which is described in schedule II of the plaint. The plaint also stated that on 16 February 1995 the temporary building of the defendant on the land caught fire and preparations were made by the defendant to put up another building against which a complaint was made to the police by the plaintiff on 18 February 1995. In the circumstances, the plaintiff sued the defendant for a declaration that he is entitled to possess the land described in schedule I of the plaint and ejection of the defendant from the portion of the said land described in schedule II of the plaint.

The defendant having formally denied the principal allegations made against him in the plaint maintained that a person by the name Herath Singho came to Vavuniya during the Second World War and went into occupation of an area of nearly 12 perches of jungle land which coincided with the land described in schedule II of the plaint. Further, the defendant pleaded that the land occupied by the said Herath Singho got divided into two blocks in extent of 5 perches and 7 perches and he was granted a LDO permit for the block in extent of 5 perches and the block left with an extent of 7 perches was possessed by Sudumenika, the wife of late Herath Singho and later sold on an informal document to the defendant. According to the defendant, the land which is described in schedule II of the plaint was in the exclusive possession of the defendant who ran a kiosk catering to the needs of the labourers in the area.

As regards the block of land in extent of five perches, the defendant maintained that the Plaintiff put her into the fear of death and obtained his signature with a view to transfer the same. The trial proceeded upon 26 issues of which 18 were suggested by the Defendant and 8 by the Plaintiff. As has been

urged by the learned Counsel for the Plaintiff the pivotal question that arises from determination in this matter is whether the Plaintiff is entitled to the land in schedule I by virtue of the LDO permit. According to the evidence led at the trial the Plaintiff has been granted an annual permit (P1) and also a crown lease (P2) under the hand of the President of Sri Lanka. When the matter was taken up for argument the learned Counsel for the Defendant agreed on the issue to be addressed in this appeal and the said issue as formulated by the counsel for the defendant respondent is whether the cancellation of permit given to Sudumanika was done according to law?

As regards the above issue put forward on behalf of the Defendant, the Counsel for the Plaintiff has urged that the question relating to the propriety of the issuance of the permit should be challenged, if at all, not by way of a substantive civil action but before an appropriate forum which exercises the power of judicial review. I am in total agreement with this submission. In any event it is to be observed that Sudumenika on her own has never challenged the grant of the LDO to the Plaintiff.

On the question of prescriptive title set up by the Defendant the learned District Judge has rightly observed that it is impossible for the Defendant to acquire a prescriptive title against the State and therefore rejected the claim of the Defendant based on prescription. As regards the maintainability of the Plaintiff's action the Defendant contended that the Plaintiff's claim is probably one made under section 4 of the Prescription Ordinance and therefore it cannot be maintained as the action had not been instituted within a period of one year of dispossession. On a perusal of the plaint and the relief claimed,

it is not possible to subscribe to this view of the Defendant, as the Plaintiff has clearly sought a declaration that he is entitled to possess the subject matter on a LDO permit.

The judgment cited by the Defendant in DC case No. 1938 is not binding on the learned District Judge as it is a decision of the District Court which dates back to the year 1965 and also before the amendment of the Land Development Ordinance.

Learned District Judge in his judgment has decided to place reliance on the evidence of the Plaintiff and the witnesses called by him as opposed to the evidence given by the Defendant and adduced on his behalf. This decision of the Learned District Judge does not appear to be irrational or perverse. In the circumstances I am of the view that the impugned judgment warrants no intervention. Hence, the appeal under consideration should stand dismissed.

JUDGE OF THE COURT OF APPEAL.

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