

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

C.A. Appeal No. : **911/97(F)**  
D.C. Embilipitiya Case No.: 1918/L

Weerathunge Dingiri Appuhamy  
Visamithure,  
Omalpe.

**Plaintiff Respondent**

**Vs.**

Wickramaratna Dingiri Banda  
Godawela,  
Omalpe.

**Defendant**

**And now between**

Wickramaratna Dingiri Banda  
Godawela,  
Omalpe.

**Defendant Appellant**

C.A. 911/97 (F)

D.C. Embilipitiya Case No: 1918/L.

BEFORE : Sarath de Abrew, J.

COUNSEL : Gamini Premathilake with Sunil Wanigatunge  
and Lochini Ponnampereuma for the Appellant.  
Chandane Wijesooriya for the Respondent.

ARGUED &

DECIDED ON : 17.10.2012.

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Sarath de Abrew, J.

This matter was taken up for argument. Learned Counsel for the Appellant commenced and concluded his oral submissions. Learned counsel for the Respondent commences his oral submissions and concludes same. Learned Counsel for the Appellant during the course of his submissions brought to the notice of Court that at the time of institution of action in the District Court of Embilipitiya on 23.12.1982, the Plaintiff-Respondent did not have title to the corpus. Learned Counsel for the Appellant brings to the notice of Court that in view of the following authorities 1 NLR page 13 (Silva vs. Hendrikappu), 32 NLR page 217 (Silva vs. Gooneratne) and 54 NLR page 467 (Ahamadulebbe vs. Kaddubawa) the law is settled that in an action for declaration of title, the Plaintiff must have title to the corpus at the time of the institution of action. In this matter the learned Counsel for

the Respondent too conceded that at the time of institution of the action in the District Court of Embilipitiya, the Plaintiff-Respondent did not have title. With regard to the question of prescriptive title learned Trial Judge has answered the issue in the negative in the above case. The learned Counsel for the Plaintiff-Respondent too concedes that this appeal should be allowed. Due to the above reasons the appeal of the Defendant-Appellant is allowed. The Judgment of the learned trial judge is hereby set aside. The learned Trial Judge is directed to comply with this order and enter decree accordingly. The Registrar is directed to send a copy of this order along with the original record to the District Court of Embilipitiya.  
Appeal is allowed.

JUDGE OF THE COURT OF APPEAL

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