

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

Heenpellage Don David Appuhamy,  
Julpallama,  
Ambalantota.

**Plaintiff**

**Vs.**

C.A. No. 692 / 99 F  
D.C. Hambantota No. 780 / L

Wanniarachchi Kankanamge Piyadasa,  
Julpallama,  
Ambalantota.

**Defendant**

**And Now Between**

Wanniarachchi Kankanamge Piyadasa,  
Julpallama,  
Ambalantota.

**Defendant-Appellant**

**Vs**

Heenpellage Don David Appuhamy,  
Julpallama,  
Ambalantota.

**Plaintiff-Respondent**

BEFORE : UPALY ABEYRATHNE J.  
COUNSEL : Shiral Lakthilake for the Defendant  
 Appellant  
 M. C. M. Muneer for the Plaintiff  
 Respondent  
 WRITTEN SUBMISSION ON : 27.06.2012  
 ARGUED ON : 29.06.2012  
 DECIDED ON : 17.10.2012

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the Defendant Appellant (hereinafter referred to as the Appellant) seeking to recover the possession of the land described in the schedule to the plaint on the basis that he had been in possession of the said land under a land permit granted by the State. The Appellant filed answer denying the averments in the plaint and prayed for a dismissal of the Respondent's action. The case proceeded to trial on 11 issues. After trial the learned District Judge delivered a judgment in favour of the Respondent. Being aggrieved by the said judgement dated 04.02.1994 the Appellant has preferred the present appeal to this court.

The Appellant took up the position that at the time of the institution of the said action the Respondent did not have a valid land permit issued by the State and hence the Respondent was in unlawful occupation of the land in dispute.

It appears from the evidence of the Respondent at page 68 of the brief that the Respondent had admitted that he was in unlawful occupation of the land in

dispute without a valid land permit. Said evidence of the Respondent contradicts the averments contained in paragraph 02 of the amended plaint dated 16.11.1987.

The Respondent had relied upon a land permit dated 23.08.1988 which had been produced at the trial marked P 1. No doubt that the said land permit had been issued to the Respondent long after the institution of the action in the District Court. Hence the submission of the Appellant that at the time of the institution of the action the Respondent was not the permit holder of the land in dispute is sustainable. It is well settled law that the rights of the parties to be decided as at the date of institution of the action.

The Respondent further submitted that he had been in possession of the land described in the schedule to the plaint since 1959 and said possession was legalized by the said permit dated 23.08.1988. I now advert to the said submission. The land described in the schedules to the original plaint and also to the amended plaint is the land depicted in Plan No ISP 133 prepared by the Surveyor General situated at Walawa of East Girawapattu in the district of Hambantota Southern Province and bounded on the north by Lot No. 141 on the east and south by Lot No 12 on the west by Lot No. 134 containing in extent of 30 perches.

At the trial the Respondent's position was that his possession of the said land has been legalized by the land permit dated 23.08.1988 produced marked P 1. According to the schedule to the said land permit the Respondent has been allocated a land situated at Walawa of Magam Pattu in the district of Hambantota Southern Province and bounded on the north by the land occupied by H.L. Sirisena on the south by the land of Hinni Appuhamy on the west by the land of W.A.K. Piyadasa containing in extent of 30 perches. It is important to note that eastern boundary of the land has not been described in the schedule to the said land permit.

Hence it is crystal clear from the said two schedules that two deferent lands have been described in the said two schedules. The land described in the schedule to the plaint is situated at Walawa in East Girawapattu and the land described in the schedule to the Land Permit (P 1) is situated at Walawa in Magam Pattu. In his evidence the Respondent has failed to explain this discrepancy.

Also, at the trial the Respondent has produced the Plan No 423 dated 18.03.1985 prepared by Gunatunge Warnakulasuriya Licensed Surveyor in order to identify the land in dispute. According to the said Plan the land in dispute is situated at Walawa of East Girawapattu in the district of Hambantota Southern Province and bounded on the north by the road leading to Boralukanda from the main road on the east by Lot No. 12 on the south by Lot No 135 on the west by Lot No. 134 containing in extent of 30 perches.

It is also important to note that said Plan No 423 has been prepared 03 years and 05 months prior to the grant of the said land permit. Therefore it is clear that the Surveyor was not in a position to identify the land described in the schedule to the said Land Permit.

The Respondent heavily relied upon the Land Permit in claiming the possession of the land in dispute. But he has failed to identify the same as described in the schedule to the said Land Permit.

In the said circumstances I allow the appeal and set aside the judgment of the learned Additional District Judge dated 04.02.1994 and dismiss the action of the Respondent with costs.

*Appeal allowed.*

Judge of the Court of Appeal