

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

In the matter of an application in  
revision

Court of Appeal No: CA (Revision) 1251/2006

District Court of Embilipitiya No. 5381/L

R.M. Piyasiri and another

Plaintiffs-Petitioners-Petitioners

Vs.

R.M. Ratnaweera and eight others

Defendants-Respondents-  
Respondents.

Before: **Eric Basnayake J**

Counsel : Hrsha Soza P.C. with Anuruddha Darmaratne for the Plaintiffs-

Petitioners-Petitioners

J.M. Wijebandara with Kaushalya Perera and Dammika Weerasekera

instructed by Thilina Vitharana for the 1<sup>st</sup> to 6<sup>th</sup> Defendant-Respondents

Written submissions tendered on: 13.12.2006 & 22.6.2007

Argued on: 9.1.2012

Decided on: 15.2.2012

Eric Basnayake J

The plaintiffs-petitioners-petitioners (plaintiffs) filed this revision application *inter alia* to have the order dated 20.7.2006 (P-11) of the learned District Judge of Embilipitiya set aside. By this order the learned Judge had allowed the Fiscal to deliver possession of the road as shown in plan No. 460 dated 5.6.2006 (P 9a) prepared by K.D.N. Jayantha, Government Surveyor to the defendants-respondents-respondents (defendants). The Fiscal delivered possession on 21.8.2006. However the learned counsel for the defendants had given an undertaking to court that the defendants will not take steps to cut the road and the undertaking had been extended up to date.

#### The District Court case

The plaintiffs filed action in the District Court of Embilipitiya on 16.11.1995 *inter alia* to have a declaration of title to lot No. 73 of the plan No. BSPP 460. The plaintiffs claim that the defendants have been making an attempt to cut a roadway through lot 73 over which Primary Court action No. 30610 was instituted. The plaintiffs are seeking a declaration that the defendants do not have a roadway through lot No. 73. The defendants claim in the answer filed that in the Primary Court action No: 11179 the learned Judge had allowed the defendants to use this roadway. The defendants claim that they have been using this roadway for more than 50 years and claim a right of way through prescription.

After the defendants filed answer this case was fixed for trial. During the trial on 17.1.2001 the parties settled this case. According to the settlement the parties had agreed to have the

roadway demarcated as described in the Gazette dated 18.2.1993 through Atakalanpanna Pradeshiya Sabawa. The parties also agreed to continue to use the much narrower existing roadway. In addition to the District Court case the plaintiffs filed a writ application in the Provincial High Court of Ratnapura in case No.R.A.52/2001. On 31.8.2004 this case too was settled where the parties agreed again for the Atakalanpanna Pradeshiya Sabawa to identify this roadway through a Government Surveyor.

#### Demarcation of the roadway by a Government Surveyor

In pursuance to this agreement at the instance of Atakalanpanne Pradeshiya Sabawa this roadway was demarcated on the ground by K.D.N. Jayantha, Government Surveyor between the period 31.5.2006 and 5.6.2006 and plan No. 460 was submitted (P8c). On 20.7.2006 the plaintiffs objected to this plan. The court after inquiry on the same day, namely, 20.7.2006, rejected the objections and issued writ. It is this order the plaintiffs are seeking to vacate.

#### The order

The learned District Judge held that the parties have arrived at a settlement in the District Court and in the Provincial High Court of Ratnapura. In terms of these settlements the parties have agreed for a Government Surveyor to identify the road described in the Gazette dated 18.2.1993 and to demarcate it on the ground. In terms of this agreement the Government Surveyor had identified and demarcated the roadway on the ground. The learned Judge had also observed that it is less than  $\frac{1}{3}^{\text{rd}}$  of the extent of the entire road that goes through the plaintiff's land. The balance  $\frac{2}{3}^{\text{rd}}$  goes through lands belonging to others and the owners of these lands have not objected to the plan. Due to those reasons the objections of the plaintiffs were rejected and the writ was allowed.

### The dispute

A roadway from Karawagahayatawatte Mandiya to Kehelwatumullagodahena, 6 meters wide and 508 meters in length has been published in the Government Gazette dated 18.2.1993. According to the Gazette, the direction of the roadway is through Bombahaduwa Rubber Estate. The plaintiffs claim that Bombahaduwa Rubber Estate is lot No. 72 and the roadway has to be demarcated through lot No. 72. The plaintiffs complain that the Government Surveyor had demarcated the roadway through the land called Kahatagaha Deniya Godahena, which is depicted as lot No. 73 belonging to the plaintiffs.

### Lots 72 & 73 form part of the same land?

The plaintiffs state in the plaint that lots 72 and 73 were purchased by M.Matin Perera and G. Nerindasiri Ananda Karuna by deed No. 645 of 26.12.1990. The plaintiffs state that in lieu of his share, the said G.N. Ananda Karuna possessed and enjoyed lot No. 72 and Martin Perera possessed lot No. 73. The plaintiffs claim that the said Martin Perera had sold lot No. 73 to the 1<sup>st</sup> plaintiff by deed No 2091 of 20.2.1995. However on perusal of the deed No. 2091 it appears that Martin Perera conveys the rights he enjoyed through the deed No. 645 to the plaintiffs. By deed 645 Martin Perera and G.N. Ananda Karuna got lots 72 and 73. The schedule to deed No. 2091 describes lots 72 and 73 as a contiguous land of 5 acres and 4 perches. These two lands are described as Bombahaduwa and Kahatagahadeniyegodahena in plan No. 03850 (P3). This is a contiguous land 5 acres and 4 perches in extent. The deed No 2091 does not support the plaintiffs contention that the plaintiff was given lot No. 73.

There is no evidence to establish that lot No. 72 and lot No. 73 have been possessed as two separate lands. The deeds establish both lots, namely, lot No. 72 and 73 (identified as

Bombuhaduwa & Kahatagahadeniyegodahena containing in extent 5 acres and 4 perches) were possessed as one land. The Gazette dated 18.2.1993 refer to the road from Karawgahayatawatte Mandiya to Kehelwatumullagoda Hena through Bombuhaduwa Rubber Estate. It may be that the Gazette does not describe the land by its full name. The full name is Bombuhaduwa & Kahatagahadeniyegodahena. The Government Surveyor too refers to this land as Bombuhaduwa Kahatadeniyagodahena. Even the schedule to the plaint refers to this land as Bombahaduwa and Kahatadeniyagodahena. I am of the view that the reference to Bombahaduwa in the Gazette refers to Bombahaduwa & Kahatagadeniyegodahena Rubber Estate. Therefore the submission of the learned President's Counsel that the road has to be along Bombahaduwa and not through Kahatagahadeniyagodahena fails.

I am in agreement with the submission of the learned counsel for the defendants that the plaintiffs are responsible in not allowing the court to fully adjudicate on this dispute. It appears that it is the plaintiffs who initiated settlements. Having agreed to go in for settlements twice before the District Court and High Courts (Provincial) the plaintiffs have then prevented the court from giving effect to these settlements. I am of the view that the plaintiffs have abused the process of this court by indirectly moving to set aside the settlement. The application of the plaintiffs is without merit and dismissed with costs in this court and the court below.

Judge of the Court of Appeal