

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC  
OF SRILANKA**

C.A 1108/1998 (F)  
D.C. Homagama 3305/L

Wadduwage Dharmadasa  
No. 306, Kaduwela Road,  
Malambe.

**PLAINTIFF**

Vs.

Manthre Vithanage Jinasena  
No. 252/6, Udaya Mawatha,  
Kaduwela Road,  
Malambe.

**DEFENDANT**

**AND NOW**

Manthre Vithanage Jinasena  
No. 252/6, Udaya Mawatha,  
Kaduwela Road,  
Malambe.

**DEFENDANT-PLAINTIFF**

Vs.

Wadduwage Dharmadasa  
No. 306, Kaduwela Road,  
Malambe.

**PLAINTIFF-RESPONDENT**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** A.K. Chandrakantha for the Defendant-Appellant

R. Suwandarathne with N. Koggalahewa  
for the Plaintiff-Respondent

**WRITTEN SUBMISSIONS**

**FILED ON:** 31.01.2012

**DECIDED ON:** 06.02.2012

**GOONERATNE J.**

This was an action filed in the District Court seeking a declaration of title to the land described in the schedule to the plaint and to eject the Defendant and a claim for damages as prayed for in the plaint. Parties proceeded to trial on 11 issues and two admissions. The Defendant-Appellant's position was that Plaintiff obtained Rs. 60,000/- and Rs. 1000,000/- (as in paragraph 3 of answer) on the promise of transferring the land in dispute and that he had effected improvements in a sum of Rs. 1 million to the premises in dispute (issue Nos. 7 & 8). It is further pleaded (refer to issue Nos. 5 & 6) that deed No. 5185(P1) was a fraudulent deed and that the vendor did not sign the said deed.

Plaintiff's position very briefly inter alia is that

- (a) Defendant entered into possession of Plaintiff's property to purchase same and at the same instance challenge deed 5185(P1) from which Plaintiff acquired title.
- (b) Plaintiff states that Defendant in view of (a) above has taken up self contradictory defences.

Refer to Ranasinghe Vs. Premawardena 1985(1) SLR 63

- (c) Defendant entered the property in dispute as a licensee. As such cannot dispute title of Plaintiff - refer to Section 116 of Evidence Ordinance.
- (d) Property in dispute purchased by deed P1, 12 year prior to institution of action.
- (e) Deed P1 marked without objections (paragraph 5 of proceedings of 12.6.1997. As such there is no need to prove P1 by calling witnesses.
- (f) Plaintiff disclosed in evidence that the vendor N. Balasooriya is angry with Plaintiff on a right of way dispute.

Defendant-Appellant's position is that

- (1) Deed P1 as mentioned in the deed was signed at Biyagama but Plaintiff in cross-examination states it was signed at Malabe.
- (2) Plaintiff admits V1 & V2 documents.
- (3) Deed P1 was a fraudulently executed deed
- (4) N. Balasooriya conveyed his rights by deed V3 (947) to Defendant on or about 17.9.1996.
- (5) Deed of rectification (v 9)

The learned District Judge has arrived at certain factual matters or has decided on primary facts i.e. Defendant entered the land in question as a licensee, and that at that point of time Plaintiff was the owner. As such Plaintiff's title cannot be disputed by Defendant. Trial Judge also observes that deed P1 was not marked subject to proof. Therefore it becomes evidence

for all purposes of the law in the case. If no objection is taken at the close of a case where documents are read in evidence they are all evidence for all purposes of the law. This is the *cursus Curiae* of the Original Court. 1981(1) SLR 18 at 19/24; *Latheef and another vs. Mansoor* 2011 BLR at 204.

The trial Judge in the judgment states that deed P1 was executed on or about 1984. Plaintiff was in possession of the land. Thereafter deed 947 & 980 had been executed and the Defendant seems to rely on same. It is the view of the trial Judge that the Defendant's position of executing deed P1 was done fraudulently, a contemporaneous police complaint could have been made by Defendant. It was not done. Deeds relied upon by the Defendant executed on or about 1996. If the Defendant urge fraud steps should have been taken by Defendant. The absence of any kind of complaint and the Defendants were aware of execution of deed P1. Defendants should be aware of P1 and Defendant's deeds executed only after summons had been served on the Defendant in the original case. These facts had been highlighted by the trial Judge to demonstrate the weaknesses of the Defendant-Appellant's case. By document V1 the Defendant admits Plaintiff's title.

In the above circumstances there seem to be no question as regards title of Plaintiff to the land in dispute. Plaintiff has discharged the

burden properly and established title to property. Wanigaratne Vs. Juwanis Appuhamy 65 NLR 167. In an action rei vindicatio Plaintiff must prove and establish title. In this case once Plaintiff establish legal title to the property in dispute burden of proof is shifted to the Defendant to show his lawful occupation. The dicta in Wijetunge Vs. Thangarajah 1999 (1) SLR 53 would be relevant since in the case in hand Defendant was not able to prove lawful occupation.

In all the above circumstances the learned trial Judge has considered all primary facts and arrived at a decision. I see no basis to interfere with same. As such I affirm the judgment of the learned District Judge, and dismiss this appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL