

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

**Case No. CA 930/96F
D.C. Walasmulla 162/L**

Kubulgoda Kankanamge
Piyadasa, Galgedarakanda,
Madagoda,
Hakuruwella

Defendant-Appellant.

Vs.

Kubulgoda Kankanamge
Edwin,
Kabussawella,
Beliatta and another.

Plaintiff-Respondents.

Before : **A.W.A. Salam, J.**

Counsel : Thilan Liyanage for the defendant-appellant
and Erusha Kalidasa for the plaintiff-respondents.

Written Submissions

tendered on : 28.02.2011.

Decided on : 24.10.2011.

A W A Salam, J

The defendant has filed the purported appeal against the order of the learned district judge dated 21 November 1996. The impugned order has been made sequel to an application made by the defendant to set aside the judgment entered of consent of parties on 2 June 1994.

The background to the main dispute is that the plaintiffs filed action against the defendant for a declaration of title and eviction of the defendant from the land which is the subject matter of the action and morefully referred to in the plaint. In the plaint, the plaintiffs traced their title from a crown grant and claimed an undivided share of 2/3rd to the 1st plaintiff and 1/3rd to the 2nd plaintiff. They further alleged that the defendant had come into occupation of the building on the land with the leave and licence of the 1st plaintiff in the year 1987 and the plaintiff obtained peaceful possession of the same from the defendant in or about the year 1990. However, as a result of proceedings instituted under Chapter VII of the Primary Courts Procedure Act, the defendant has been restored to possession and the present action has been filed to have him ejected from the said premises.

The defendant took up the position that he had prescribed to the subject matter by reason of long and prescriptive possession and therefore moved that the action of the plaintiffs' be dismissed. The matter of the dispute having been taken up for trial was adjusted between the parties on the terms and conditions laid down in proceedings dated 2 June 1994. The learned judge having read over and explained the terms of settlement, the

parties had placed their signatures on the record in acknowledgment and acceptance of the said terms and conditions.

It was thereafter by petition dated 28 June 1994 the defendant applied to court to have the said judgment and decree entered of consent of parties be vacated mainly on the ground that the defendant did not understand the contents and the nature of the settlement, prior to his signing the record.

The learned district judge having inquired into the application of the defendant dated 28 June 1994 has dismissed the same on the ground that there is no right of appeal available against the said order refusing the application of the defendant. Having examined the reasoning adopted by the learned district judge to dismiss the application of the defendant, I see no reason to interfere with the same. As has been correctly pointed out by the learned counsel for the plaintiffs' there is no right of appeal available against the impugned order entered by the district judge.

There shall be no costs.

Judge of the Court of Appeal

NT/-