

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

Ekanayake Ratnayake Wasala  
Mudiyanse Ralahamilage Duganna  
Walawwe Madduma Bandara Ratnayake,  
'Duganna Wlawwa' Miyanadeniya,  
Pihimbuwa.

**Plaintiff**

**Vs.**

Land Reform Commission,  
C 82, Gregory Road,  
Colombo 7.

C.A. No. 99 / 95 F

**Defendant**

D.C. Kurunegala No. 3058 / L

**And Now Between**

Ekanayake Ratnayake Wasala  
Mudiyanse Ralahamilage Duganna  
Walawwe Punchi Bandara Ratnayake,  
'Duganna Wlawwa' Miyanadeniya,  
Pihimbuwa.

**Substituted Plaintiff-Appellant**

**Vs**

Land Reform Commission,  
C 82, Gregory Road,  
Colombo 7.

**Defendant -Respondent**

BEFORE : UPALY ABEYRATHNE J.

COUNSEL : Lal C Kumarasinghe for the Plaintiff  
Appellant

S. Sahabandu PC with J. R. Rajapaksa for  
the Defendant Respondent

ARGUED ON : 21.07.2011

DECIDED ON : 23.08 2011

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted an action against the Defendant Respondent (hereinafter referred to as the Respondent) in the District Court of Kurunegala seeking a judgment for a declaration that he is entitled to 30/72 undivided share of the land called Miyanadeniya Kande Henyaya. The Respondent prayed for a dismissal of the Appellant's action. The case proceeded to trial upon 07 issues. After trial, the learned Additional District Judge dismissed the Appellant's action with costs. Being aggrieved by the said judgment dated 13.03.1996 the Appellant preferred the present appeal to this court. Since the Appellant died during the pendency of this appeal, Ekanayake Ratnayake Wasala Mudiyanse Ralahamilage Dukganna Walawwe Punchi Bandara Ratnayake was substituted in the room of the deceased Appellant.

The Appellant claimed title to the said undivided share of the land in dispute under the deeds produced marked P 3 and P 4. He further admitted that the Respondent has been in possession of the said land since 14<sup>th</sup> of October 1975. The Respondent took up the position that the Appellant had instituted the said action on the assumption that he is entitled to the Keppitigalla Estate and he has failed to identify the land by reference to a sufficient plan. He further took up that since the land in dispute which is known as Keppitigalla Estate is vested in the Land Reform Commission under the Land Reform Law No. 1 of 1972, if there was a dispute between the parties as to the ownership of the land, steps should have been taken by the Appellant under section 4(1) of the Land Reform Law.

The learned trial judge has dismissed the Appellant's action on the basis that the Appellant had only a paper title and he did not have the possession of the land in dispute and he had lost his title since he had failed to act according to the provisions of the Land Reform Law.

I now examined the law applicable to a dispute between parties as to the ownership of any agricultural land which is subjected to the ceiling under the said law since the Appellant has admitted that the Respondent has been in possession of the said land since 14<sup>th</sup> of October 1975 and also the Respondent has claimed that the said land is vested in the Land Reform Commission. Section 4 of the Land Reform law No 1 of 1972 stipulates as follows;

4(1) Where there is a dispute between parties as to the ownership of any agricultural land which is subject to the ceiling the Commission may, after such inquiry as it may deem fit, make an interim order declaring one of such parties to

be entitled to the possession of such agricultural land. Every interim order shall be published in the Gazette and shall come into force on the date of such publication.

(2) Within two weeks of the publication of the interim order in the Gazette the Commission of its own motion or any of the parties to the dispute referred to in subsection (1) may refer such dispute to a court of competent jurisdiction for final adjudication.

(3) Till the final order is made by a court on such reference, the interim order shall be valid and effectual and shall not be called in question in any court by way of writ or otherwise. So long and for so long only as the interim order is in force the person declared by such interim order to be entitled to possess the agricultural land shall be deemed for the purpose of section 3 to be the owner of such agricultural land.

(4) As long as the interim order is in force the Commission shall not alienate the agricultural land to which the interim order relates:

Provided, however, that, where no reference had been made under subsection (2), the interim order made under subsection (1) shall have the effect of a final order under subsection (3).

It is manifest from Section 4 of the said Law that clear-cut provisions are embodied in the said section to deal with disputes which arise between parties as to the ownership of any agricultural land which has, by operation of section 3(2), vested in the Commission, and the manner in which such disputes are to be resolved. Special provisions are set out in section 5 to deal with persons who became owners of agricultural lands in excess of the ceiling after the date of commencement of the provisions of the Land Reform Law. Under the provisions of section 6, the Commission gets absolute title, free from all encumbrances, to any

agricultural land which becomes vested in the Commission in terms of the provisions of sections 3 and 5.

The nature and the scope of the Land Reform Law was carefully considered by the Supreme Court in the case of *Jinawathie and Others Vs Emalin Perera* [1986] 2 SLR 121. It was observed in the said case that "A careful consideration of the provisions of the Land Reform Law (hereinafter referred to as "this Law") which have been set out at length earlier, in their proper sequence shows: that, with the coming into operation of the said provisions, on 26.8.1972, the entirety of the agricultural land owned by a person, who is entitled to more than fifty acres, has to be deemed to vest immediately in the Commission; that what is so deemed to vest, vests absolutely free from all encumbrances; that thenceforth the person who owned such land is deemed to be a statutory lessee of the Commission upon the terms and conditions set out; that in the event of a dispute arising between such statutory lessee and another as to the ownership of any such land, the Commission has the power to make an interim order as to which of them is to possess such land and the interim order so made is to remain in operation until such time as a final order is made by a competent court to which the Commission is required to, refer such dispute. Thereafter such statutory lessee has to make a, 'statutory declaration' within a specified time setting out the particulars required to be set out, including a survey plan or sketch map depicting the boundaries of the portion or portions of the land which has so vested and which such lessee prefers to retain. Upon the receipt of such statutory declaration the Commission is required to make as soon as practicable a 'statutory determination" specifying the portion or portions of the agricultural land that the statutory lessee shall be allowed to retain."

It is common ground that the Appellant did not refer the dispute with regard to the ownership of the said land which is subject to the ceiling, to the

Commission. Hence the Appellant's failure to comply with the procedure enacted by Land Reform Law would negate the Appellant's right to sue against the Respondent.

The Appellant further submitted that the Respondent has failed to produce a plan in respect of the estate he claimed and also he has failed to prove his title to the said estate.

This being an action rei vindicatio, and the Respondent being in possession, the initial burden of proof was on the Appellant to prove that he had dominium to the land in dispute. Therefore the Appellant should prove that he has title to the disputed property and that such title is superior to the title put forward by the Respondent who is in occupation. The Appellant can and must succeed only on the strength of his own title, and not upon the weakness of the defence. The Appellant must prove his case on a balance of probability.

In the case of *De Silva Vs Goonetilleke* (1931) 32 N. L. R. 217, which is a decision of a Bench of four Judges, Macdonell C.J. stated "There is abundant authority that, a party claiming a declaration of title must have title himself. "To bring the action rei vindicatio plaintiff must have ownership actually vested in him". (I Nathan p. 362, s. 593.) "The right to possess may be taken to include the ius vindicandi which Grotius (2, 3, 1) puts in the forefront of his definition of ownership. .... The authorities unite in holding that plaintiff must show title to the corpus in dispute and that if he cannot, the action will not lie".

In the case of *Abeykoon Hamine Vs Appuhamy* (1950) 52 NLR 49, Dias, S. P. J. Said "This being an action rei vindicatio, and the defendant being in

possession, the initial burden of proof was on the plaintiff to prove that he had dominium to the land in dispute.”

Dias, S. P. J., reiterated this principle in the case of *Peeris v. Savunhamy* - (1955) 54 NLR 207 when he stated that, in an action for declaration of title, where the defendants are in possession, the burden lies on the plaintiff to prove that he has dominium to the land in dispute.

In the case of *Banda Vs Soysa* [1998] 1 SLR 255 G.P.S. de Silva CJ held that "In a case such as this the true question that a court has to consider on the question of title is, who has the superior title?"

The Appellant’s submission was that his land is depicted in plan P 1. The land depicted in plan P 1 contained 18 plots of lands. Surveyor Galagedara who produced the plan P 1 has admitted in his evidence that lot 1 in the said plan which is Acres 61 Rood 2 Perches 35 in extent is owned by Janatha State Development Board. He further said that several other lots depicted in P 1 are occupied by several persons whose names are mentioned in his report P 1(a). It is manifest from the said evidence that the Appellant has failed to prove that he had dominium to the land in dispute.

In the said circumstances I am of the view that the learned Additional District Judge was right in dismissing the Appellant’s action. Hence I dismiss the instant appeal of the Appellant with cost.

*Appeal dismissed.*

Judge of the Court of Appeal