

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

L. Gunadasa

1A. **Substituted Plaintiff-Appellant**

**Vs.**

CA Appeal No: 259/97 (F)  
DC Matara 6294/L

A.P. Soma Dharmalatha

**Plaintiff-Respondent**

Before : Sisira de Abrew J &  
K.T Chitrasiri J

Counsel Vijith Singh for the appellant  
Ranjan Suwadaratne for the respondent.

Argued on : 17.6.2011

Decided on : 4.8.2011

**Sisira de Abrew J.**

This is an appeal to set aside the judgment of the learned District Judge Matara dated 29.4.97.

Plaintiff respondent filed action in the District Court of Matara for a declaration of title to the land described as lot D2 in plan No.2809 marked as P1; for a declaration that the said lot D2 is a part and parcel of lot D of the

said plan and for an order for demolition of the toilet and the temporary shed shown as building Nos. 1 and 2 respectively in the said plan.

Defendant appellant claimed that he had acquired title to the said lot D2 in plan No.2809 by way of prescription and had acquired rights and title to the road way over the plaintiff's land. This road is shown as lot No. D3 in plan No.6382 marked as Y1.

Learned District Judge concluded that the defendant had acquired title to building No. 1 but not to building No.2 of plan No. 2809. He further concluded that that the defendant was not entitled to a right of way over the plaintiff's land. Learned counsel for the appellant did not make submission with regard to the said building No.2 but contended that the defendant is entitled to a right of way over the plaintiff's land on the basis of necessity. The only question that must be decided in this case is whether the defendant is entitled to a right of way over the plaintiff's land on the basis of necessity.

The defendant's son, in his evidence, took up the position that he and his father were using a strip of the plaintiff's land as a road. But when SL Galapaththy licensed surveyor went to the land in dispute on 4.6.86 to prepare plan No. 2809 (P1) the defendant did not show the road that he was claiming over the plaintiff's land to the surveyor. According to the surveyor there was no such road when he surveyed the land. The defendant in his original answer filed on 18.11.97, did not claim a right of way over the plaintiff's land. He made this claim only in his amended answer filed on 6.6.1991. Learned District Judge after considering the said material concluded that there had not been a road over the plaintiff's land. When I

consider the above material, I see no reason to interfere with the said conclusion of the learned District Judge.

The next question that must be decided is whether the defendant is entitled to a right of way over the plaintiff's land on the basis of necessity. According to the evidence led at the trial, defendant's house is situated next to Karalenchinahamy's house. Defendant and Karalenchinahamy are brother and sister. Learned Counsel for the appellant submitted that the defendant had no access to the main road except over the plaintiff's land as a wall had been constructed right round Karalenchinahamy's house. But the defendant's son, in his evidence, admitted that there was an opening between the defendant's land and Karalenchinahamy's land and that this was being used as a road. If this is so, can the defendant claim a right of way over the plaintiff's land on the basis of necessity? In order to answer this question it is necessary to consider certain judicial decisions. In *Lentz Vs Mullin* [1921] E.D.L. 268 South African court observed thus: "If the person claiming the right of way has an alternative road to the one claimed, although such route may be less convenient and involve a longer and more arduous journey, so long as existing road gives him a reasonable excess to a public road, he must be content and cannot insist upon a more direct approach over his neighbour's property." Weerasooriya J, in *Mohotti Appu Vs Wijewardene* 60 NLR 46 applying the above principle held: "A person can claim a way of necessity for the purpose of going from one land owned by him to another. The right of way will not be granted if there is an alternative route to the one claimed although such route may be less convenient and involve a longer and more arduous journey." Applying the principles laid down in the above judicial decisions, I hold that a person who has an alternative road is not

entitled to a right of way over another person's land on the basis of necessity. I therefore hold that the defendant is not entitled to a right of way over the plaintiff's land. The learned District Judge has considered the above facts and decided that the defendant is not entitled to a right of way over the plaintiff's land. In my view the learned District Judge was correct when he reached the above conclusion.

For the aforementioned reasons, I refuse to interfere with the judgment of the learned District Judge and dismiss the appeal with costs.

*Appeal dismissed.*

Judge of the Court of Appeal.

K.T Chitrasiri J.

I agree.

Judge of the Court of Appeal.