

Archbishop house,
Colombo 8.

**Defendants-
Appellants**

-Vs-

Leelaratne Dassanayake,
No. 92, Negombo Road,
Kurunegala.

Plaintiff-Respondent

Before : **A.W.A. Salam, J.**
Counsel : Padma Bandara with Shamil Rajapakse for the
Defendant-Appellant.

Decided on : 28.07.2011

A.W. Abdus Salam, J.

The plaintiff filed action against the defendants for a declaration of title and damages. The learned district judge dismissed the plaintiff's action for want of proof of title. Simultaneously he dismissed the counter claim of the defendants based on the footing that the 1st defendant has failed to show any connection as between P1 and subsequent deeds.

On a perusal of the evidence led at the trial it is to be seen that the Archbishop of Colombo has had a clear chain of title to the subject matter for more than one hundred years. Quite surprisingly, the learned district judge in his judgment has observed that the 1st defendant has failed to prove as to how the title of Christian Appuhamy had devolved on him. As a matter of fact defendants admitted at the trial that the document marked as P1 has no connection to the subject matter. Even if P1 is rejected the title of the 1st defendant commences from 27 March 1888 with deed bearing No 1484 referred to in P6.

On a clear chain of title commencing from 27 March 1888 the 1st defendant has established that he is the owner of the subject matter and the learned district judge has clearly erred himself when he rejected the claim of the defendant that he is entitled to a declaration of title to the said property.

When one examines the title of the 1st defendant there is no difficulty in concluding on a balance of probability that the ownership of the subject matter has been established by the 1st defendant and that he is entitled to a declaration as sought in his answer. As such, I am of the view that the judgment of the learned district judge rejecting the claim in reconvention of the 1st defendant needs to be corrected.

For reasons stated above I set aside the judgment of the learned district judge rejecting the claim in reconvention of

the 1st defendant for a declaration of title to the land and substitute the same with the declaration that the 1st defendant is the owner of the subject matter. The learned district judge is directed to amend the decree accordingly.

Appeal allowed subject to the above declaration. There shall be no costs or damages payable by the plaintiff.

Judge of the Court of Appeal

NT/