

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

S. K. Brakmanage Tikiri Banda
P 38, "Takaran Boutique"
Pelwehera, Dambulla.

PLAINTIFF

C.A 283/1997(F)
D.C. Kurunegala 4254/L

Vs.

1. Leela Hettiarachchi
Balawathwala, Handupola,
Mudigala, Gokarella.
2. Wimalasena
Balawathwala, Handupola,
Mudigala, Gokarella.

DEFENDANTS

S. K. Brakmanage Tikiri Banda
P 38, "Takaran Boutique"
Pelwehera, Dambulla.

PLAINTIFF-APPELLANT

Vs.

1. Leela Hettiarachchi
Balawathwala, Handupola,
Mudigala, Gokarella.
3. Wimalasena
Balawathwala, Handupola,
Mudigala, Gokarella.

DEFENDANT-RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL: Appellant is absent & unrepresented
M.M.F. Madbeeha for Defendant-Respondents

**ARGUED &
DECIDED ON:** 29.04.2011

GOONERATNE J.

This was an action filed in the District Court of Kurunegala seeking a declaration of title and eviction of the Defendant. Parties proceeded to trial on 21 issues. Plaintiff has relied on documents P1 to P4 to prove title of the land in dispute which according to the plaint and Plaintiff's evidence, land belonged to the Land Reform Commission, who was the original owner. District Judge, very correctly dismissed plaintiff's action. Appeal arises from the judgment of the District Judge dismissing Plaintiff-Appellant's action.

Brief fees had been deposited by both parties. Registrar of this court noticed both parties to this appeal. Notices had been duly dispatched to the Appellant. However the Appellant was absent and unrepresented on the date of hearing. Appellant and Registered Attorney had notice of this appeal,

but it appears to this court that the Appellant had failed to exercise due diligence to prosecute this appeal. As such on this ground alone the appeal has to be dismissed although this court considered the merits of this appeal.

The learned District Judge has considered documents marked P1 to P4 and given a correct analysis of same and rejects the documents which are not supportive to prove Plaintiff's title.

The learned District Judge comments on document P1, that is stamped which contains about 5 lines and observes that it is not a document that convey title. Land described in the schedule to the plaint being described as State land, and as such P1 is not an acceptable document to convey title. No authority flow from document P1. Thus p1 is rejected and not capable to prove title. The learned District Judge's observation on same cannot be disputed or faulted. Those observations are very pertinent, (vide folio 96) and no claim could possibly be made By P1. Trial Court Judge on document P2 observes that P2 can never convey title belonging to State. A mere glance at P2 confirm the Judge's views on P2. Rejection of same is quite in order. P3 is a receipt of payment (no date) of a certain sum of money for handing over property to Tikiri Banda the Plaintiff. P4 is a document issued by National Housing Development Authority. It reads as the topic

“නිවාස ණය වාරිකා ආපසු ගෙවීමේ බලය පැවරීම එස් . කේ . ඩී . ටිකිරි බන්ධා මයා ... P4 does not indicate any conveyance of property described in the schedule to the plaint. The following extract from the learned trial Judge’s judgment explain the case of Plaintiff. එසේම අනෙක් අතට මෙම ඉඩම රජයේ ඉඩමක් නම් පැමිණිලිකරුට රජයෙන් ලබා දුන් හිමිකම් ඔප්පුවක් තිබිය යුතුය. නොඑසේ නම් රජයේ ඉඩමකට හිමිකම් ප්‍රකාශ කරවා ගැනීමට ඉල්ලා සිටීමට පැමිණිලිකරුට හිමිකම් නොමැත. එවැනි කිසිදු රජය නිකුත් කල ලේඛනයක් පැමිණිලිකරු සතුව නොමැත. එසේ හෙයින් දැන් පැමිණිලිකරු පැමිණිල්ලේ උපලේඛනයෙහි සඳහන් ඉඩමේ හිමිකරු බව ඔප්පු කිරීමට අසමත් වී ඇත.

There is no reason to dispute the learned Judge’s views on the above documents. One cannot prove little by the above mentioned unacceptable documents. No court of law can rely on same to grant relief. In a rei vindicatio action Plaintiff must prove and establish his title. Initial burden always lies on the Plaintiff 65 NLR 167; 54 NLR 207; Plaintiff has failed to discharge that burden. Plaintiff must set out his title on the basis on which he claims a declaration of title and must prove that title against the Defendant. The court cannot grant any relief to a Plaintiff except on which he has pleaded and proved to the satisfaction of court. Defendant need not be called upon to prove his case. The extract from the learned trial Judge’s

judgment as stated above provides the correct answer to dismissal of Plaintiff's case.

In the circumstances the judgment of the District Court is affirmed. Appeal dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL