

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

C.A. Appeal No. 1290/96(F)
D.C. Matale No. 4686/L

1. Nagaha Pillewe Ayupala
2. Munde Henegedara Jayawathie,
Rajamalwatta,
Gammaduwa

Defendant-Appellants

Vs
Thenne Kumburagedara Muthu Banda,
Sub-Post Officer,
Gammaduwa
Plaintiff-Respondent

Before: A.W.A. SALAM, J.

Counsel : Nimal Muthukumarana for the Defendant-Appellant and Harsha Soza PC
with Srihan Samaranyaka for the Plaintiff-Appellant

Written Submissions
tendered on : 23.02.2011

Decided on : 04.03.2011

A.W.Abdus Salam, J.

This appeal arises from the judgment dated 24 September 1996 of the learned district judge of Matale. The facts briefly are that the plaintiff respondent instituted action against the defendant-appellants for a declaration of title, ejectment and

damages in respect of lot 2 of the land called Moralande Hena in extent 2 roods and 36.89 perches depicted in plan No 3093 of 4.1.1988 made by K S Samarasingha, licensed surveyor.

As far as the title to the said allotment of land is concerned, the plaintiff has adduced clear proof of documentary and orderly evidence. The title of the plaintiff emanates from a final decree in a partition action. As a matter of fact the 3rd defendant in the partition action is the 1st defendant in this case.

Subsequent to the conclusion of the partition action the plaintiff who had been allotted the subject matter of this action has taken out a writ of possession against the defendants and has successfully evicted them from the subject matter through the fiscal. However the defendants have re-entered the subject matter and thereafter an application has been filed against them under section 325 (1) of the Civil Procedure Code. At this inquiry the plaintiff has given an unconditional undertaking to give up possession of the subject matter.

Upon a perusal of the judgment, it appears that the subject matter has been clearly admitted by the defendants. They have

not proved to the satisfaction of the learned district judge that they have any legal basis to be in possession of the subject matter.

In the circumstances, I see no reasons to interfere with the findings, judgment and decree of the learned district judge entered in favour of the plaintiff. For reasons stated above, this appeal stands dismissed subject to costs.

Judge of the Court of Appeal

NT/-