

In the court of appeal of the Democratic Socialist

Republic of Sri Lanka.

Case No: CA 826/96 F
DC Kagalle : 1961/L.

Hewayage Saradiyel,
Palambure,
Niyanduruppola

J Jane nona,
Palambure,
Niyanduruppola

1st and 2nd defendant -Appellant

Vs

Hewayage Gunasekara,
Palambure,
Niyanduruppola and others

Plaintiff – Respondent

H Romanis,
Theliyaya, Palambure,
Niyanduruppola and others

3rd to 5th Defendant-Respondent

Before : A.W.A. Salam, J.
Parties absent and unrepresented
Decided on: 20.01.2011.

A.W.Abdus Salam,J

The plaintiff's filed action against the defendants for a declaration of title in their favour to 2/5 share of the paddy field set out in the plaint and for the ejection of the 1st and 2nd defendants therefrom. There was no dispute as to the subject matter of the action which is depicted in plan No 91.

The 1st and 2nd defendants took up the position that they were in possession of the subject matter along with the land to the north of it as one single entity of a paddy field and therefore the plaintiff's action should be dismissed.

The matter of the dispute proceeded to trial on 10 issues of which 1 to 5 were suggested by the plaintiff and the rest by the contesting defendants. At the trial the plaintiff gave evidence and called Robert Perera as his witness and closed his case reading in evidence documents marked as P1 to P4.

Thereafter the 2nd defendant gave evidence and called the cultivation officer Premachandra as a witness and closed her case reading in evidence D1 and D 2.

At the conclusion of the trial by judgment dated 23 August 1996, the learned district judge delivered judgment in favour of the plaintiff's and directed that the contesting defendants be ejected from the subject matter. The findings of the learned district judge inter alia were that the contesting defendant had no manner of title to the paddy field and the claim made by them that they had worked the paddy field on rotation

"Thattumaru system" is not acceptable. The learned district judge further held that the plaintiffs being the owners of the subject matter as pleaded in the plaint are entitled to a declaration to that effect.

Upon a perusal of the impugned judgment, it is hardly possible to find fault with the basis of the findings and the judgment of the learned district judge. As such I am not disposed to think that the appellant should succeed in their appeal.

Accordingly, the appeal is dismissed subject to costs.

Judge of the Court of Appeal