

In the Court of Appeal of the Democratic
Socialist Republic of Sri Lanka

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CA APPEAL No: 61/97F

DC Mount Lavinia: 2182/L

Godamune Kusumawathie,
3B, Hokandara,
Thalalgoda, Pannipitiya

Plaintiff-Appellant

Vs

1. M Chandrasiri Perera
2. M Shanthi P Perera
3. M Dharmasiri Perera
4. M Gamini Perera
136, Thalalgoda, Pannipitiya

Defendant-Respondent

Before: A W A Salam J

Appellant absent and unrepresented and V S Gunawardena for the
defendant-respondents.

Argued on: 01.02.2011

Decided on: 09.02.2011

A W Abdus Salam, J

The plaintiff filed action against the defendants for a declaration of title to the subject matter of the action, ejection of the defendants and for damages. After trial the learned district judge proceeded to dismiss the action of the plaintiff based on the premise that the plaintiff had failed to prove title. This appeal has been preferred against the said judgment of the learned district judge pronounced on 5.2.1997.

The main ground urged in the petition of appeal is the failure of the defendant to prove deed No 27444 which was marked in evidence as D1.

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The learned district judge in his judgment has considered this aspect of the matter and come to the conclusion that D1 has been duly proved. As has been observed in the impugned judgment the pivotal question that arose for determination in the case was the authenticity of D1. However, the plaintiff has not pleaded that D1 is a fraudulent document.

In any event, as has been commented by the learned district judge the execution of D1 has been proved by the evidence of the subscribing witnesses to the document. In the circumstances, the learned trial judge concluded that the plaintiff had transferred the right title and interest that she would be declared entitled to in partition action No 11669/P to the father of the defendants. Hence, the trial judge came to the conclusion that the plaintiff is not entitled to a declaration of title as sought in the plaint and dismissed the plaintiff's action. Therefore, the findings and the judgment of the learned district judge appear to me as faultless and consistent with the evidence led at the trial.

For reasons stated above this appeal should stand dismissed.
There shall be no costs.

Judge of the Court of Appeal